

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSE LOPEZ TORRES, ALVIN GAITAN  
BENITEZ, CHRISTIAN LEMUS CERNA,  
OMAR DEJESUS CASTILLO, MANUEL  
ERNESTO PAIZ GUEVARA, and  
JESUS ALEJANDRO CHAVEZ,

Defendants.

Crim. No. 1:14cr306

May 4, 2016

JURY TRIAL

BEFORE: THE HONORABLE GERALD BRUCE LEE  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR GOVERNMENT: UNITED STATES ATTORNEY'S OFFICE  
BY: JULIA MARTINEZ, AUSA  
TOBIAS TOBLER, AUSA

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OFFICIAL COURT REPORTER:

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U.S. District Court  
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(Court recessed)

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PROCEEDINGS

(Thereupon, the following was heard in open court at 10:04 a.m.)

(Jury not present.)

THE CLERK: 1:14 criminal 306, United States versus Jose Lopez Torres, Omar Dejesus Castillo, Alvin Gaitan Benitez, Christian Lemus Cerna, Manuel Ernesto Paiz Guevara, and Jesus Alejandro Chavez, with Spanish interpreters previously sworn.

THE COURT: Good morning, everyone.

ALL: Good morning.

THE COURT: Ready to bring the jury out?

PRELIMINARY MATTERS

MS. AUSTIN: Your Honor, if I may have 20 seconds.

THE COURT: Sure. Absolutely.

MS. AUSTIN: Thank you.

For the record, Your Honor, I would just like to renew Mr. Gaitan Benitez's motion for severance. We've put it on the record several times throughout the trial. And given the contents of the closing argument of counsel for Mr. Guevara yesterday, wherein he named our client at least three times as the perpetrator of one of the crimes in the indictment, we would just like

1 to, for the record --

2 THE COURT: Is that the first time someone  
3 has named your client as being involved in the offenses,  
4 Ms. Austin?

5 MS. AUSTIN: No, it is not.

6 THE COURT: Oh, okay.

7 MS. AUSTIN: But it was as though we were  
8 facing two prosecutors yesterday during closing  
9 arguments. And just for the record, Your Honor, I  
10 wanted to renew it. That's all.

11 THE COURT: All right.

12 The motion is renewed, and for the reasons  
13 previously stated and the opposition of the government,  
14 the motion is denied.

15 Ready to bring the jury out?

16 All right. You can bring our jurors out,  
17 Mr. Toliver. Thank you.

18 (Jury present at 10:06 a.m.)

19 THE COURT: You may be seated.

20 Good morning, ladies and gentlemen.

21 THE JURORS: Good morning, Your Honor.

22 THE COURT: Good morning, Mr. Omar Dejesus  
23 Castillo; good morning.

24 Good morning, Mr. Alvin Gaitan Benitez; good  
25 morning.

1 Good morning, Mr. Manuel Ernesto Paiz  
2 Guevara; good morning.

3 Good morning, Mr. Jesus Alejandro Chavez;  
4 good morning.

5 Good morning, Mr. Christian Lemus Cerna;  
6 good morning.

7 Good morning, Mr. Jose Lopez Torres.

8 Counsel, are you ready to proceed?

9 You may proceed.

10 MR. ZIMMERMAN: Thank you, Your Honor.

11 CLOSING ARGUMENT BY DEFENDANT GAITAN BENITEZ

12 MR. ZIMMERMAN: Good morning, ladies and  
13 gentlemen. I'm Jeff Zimmerman and I, along with Amy  
14 Austin, represent Alvin Gaitan Benitez. Mr. Benitez is  
15 sitting with Ms. Austin and our paralegal, Pam Bishop,  
16 the defense paralegal, in the second row in the purple  
17 shirt.

18 That's the last time you're going to hear me  
19 say that, and, in fact, today is likely the last time  
20 you're going to hear from any of the lawyers. Today you  
21 are likely to begin the hard work of deliberations.

22 We, generally -- genuinely appreciate your  
23 service in this case. No one jumps for joy when getting  
24 a jury summons, and this wasn't just any jury summons.  
25 This case has been an unusually significant hardship in

1 terms of length and subject matter, and we understand  
2 that.

3 But I hope all of you have gained an inside  
4 appreciation of what is so amazing and essential about  
5 the American criminal justice system, and that is that  
6 no matter how difficult the subject matter, in our  
7 system of justice jurors are required to dispassionately  
8 consider the evidence.

9 We convict people base only on evidence, not  
10 based on emotion. We don't convict based on a picture  
11 of Alvin making the claw in front of his face. You know  
12 the picture I'm talking about. The government keeps  
13 showing it. And we don't convict based on selfies. And  
14 that's all that picture was.

15 And we don't convict based on gruesome  
16 photos. These were gruesome murders. No one is  
17 claiming that they weren't.

18 And at the end of her closing argument,  
19 Ms. Martinez put some gruesome photos up with an  
20 impassioned plea for justice.

21 But justice requires more than shocking  
22 photographs. Justice requires reliable evidence.  
23 Justice requires proof beyond a reasonable doubt. It is  
24 not justice to convict a roomful of defendants because  
25 you are shown some gruesome photos.

1           The government, during closing arguments --  
2 and you've heard this -- gets to go first and they get  
3 to go last. The government gets a rebuttal close after  
4 all of the defendants have their closing arguments, like  
5 this. They get to address you at the very end, and I  
6 and no one else will get a chance to respond to that.

7           So, I ask you to please keep in mind  
8 everything that I say during the -- during the  
9 government's rebuttal and then when you deliberate.  
10 This will be my only chance to address you.

11           Remember during that long jury selection  
12 process, Judge Lee emphasized that simply being a member  
13 of MS-13 is not a crime.

14           You may also recall early on in the trial --  
15 this was way back on March 31st -- it was following the  
16 testimony of a law enforcement witness named Robert  
17 Hicks. Judge Lee turned to you and he emphasized that  
18 the fact that these defendants are sitting here means  
19 nothing until the end of the case, in which you have all  
20 the evidence to consider.

21           Judge Lee emphasized that there have been  
22 cases in which MS-13 defendants have been acquitted in  
23 this courtroom. And Judge Lee again emphasized this  
24 when he instructed you yesterday that it is not a crime  
25 to be a member or associated with MS-13.



1           You will get a copy of the jury  
2 instructions, and at the top they're numbered. And if  
3 you're taking notes and want to refer, this is jury  
4 instruction number 12.

5           Alvin Gaitan Benitez is charged in Count 5  
6 and Count 6. Count 5 is the reburial of Nelson Omar  
7 Quintanilla Trujillo, who is known as Lagrima. And  
8 Count 6 is the murder of Gerson Adoni Martinez Aguilar,  
9 who is known as Lil Guasón.

10           At the end of my closing argument, I'm going  
11 to ask you to find Alvin Gaitan Benitez not guilty,  
12 based on the lack of evidence beyond a reasonable doubt  
13 against him in this case.

14           The evidence in this case is a contradictory  
15 mess, but a number of things are crystal clear.

16           First, it's clear that the government's gang  
17 witnesses are all liars who are trying to buy their way  
18 out of trouble, out of jail and into lawful status in  
19 the U.S., by implicating others.

20           The second thing that is crystal clear and  
21 related is that all MS-13 members are liars. They  
22 bluster. They take credit for things they do not do as  
23 a way to protect themselves. They need to lie to  
24 survive. You've heard that repeatedly.

25           You've heard a number of various roles of

1 those associated with the gang, as well as various  
2 nicknames for everyone. Alvin Gaitan Benitez was known  
3 as Pesadilla, or Tuner, as well as some other nicknames.  
4 He was a blusterer.

5 And in MS-13, his role was to be the fall  
6 guy. Alvin is the guy gang members left behind when  
7 they fled to Kansas City. He stayed back, lived at  
8 home, went to work. Alvin is the guy who the government  
9 gets sent to dig a grave for Lagrima's reburial. They  
10 claim he was running the gang. But they also claim he  
11 was just sent as a lowly grave digger.

12 Lots of homeboys, according to the evidence,  
13 participated in Lagrima's reburial, but only Alvin is  
14 charged with that conduct in Count 5. He is the fall  
15 guy for the gang and a fall guy for the government.

16 Alvin wasn't running the gang, ladies and  
17 gentlemen, and he wasn't running off to Kansas City  
18 after Lil Guasón was murdered. The only thing Alvin was  
19 running was his mouth. He blustered about things that  
20 he did not do.

21 Let's turn to the evidence, and I want to  
22 highlight those witnesses relevant to the charges faced  
23 by Mr. Alvin Benitez.

24 The government's very first witness in this  
25 case was Sergeant Claudio Saa, who is the government's

1 gang expert. Sergeant Saa testified that members of  
2 MS-13 advance in the gang through a reputation for  
3 violence.

4 He testified that tattoos are a way that  
5 violent acts are recognized, and that they are usually  
6 earned for a homicide. The tattoos reflect status.

7 Sergeant Saa testified that gang members  
8 always act in their own self-interest. They lie to  
9 everyone. They lie to each other. They lie to enhance  
10 their reputation and status in the gang.

11 He testified that they lie to conceal the  
12 fact that they failed to complete missions. They lie by  
13 taking credit for things other homeboys did. They boast  
14 about violence they did not commit. False boasting is a  
15 fundamental part of gang life.

16 Lying is a fundamental part of gang life.  
17 In the gang, your reputation is everything, and so lying  
18 is everything. Lying keeps you alive. And once  
19 arrested, gang members keep lying. They take the stand  
20 and they tell lie after lie.

21 As if to emphasize this point, almost  
22 immediately, the very next government witness was Osmin  
23 Alfaro Fuentes, who is known as Buso. Buso, if you  
24 recall, was the government witness that had the huge  
25 "MS" tattooed on his forehead, and he was a liar and a

1 blusterer.

2 Buso claimed to be so drunk that he didn't  
3 know he was getting "MS" tattooed across the top of his  
4 face. He didn't even realize it was happening. He just  
5 woke up. There it was.

6 That's a ridiculous story. Remember that  
7 "MS" tattoo reflects violence and consequently status.  
8 But at that time, he had not yet committed any killings.  
9 What Buso was doing with the tattoo was false bravado, a  
10 claim plastered across his forehead that he had  
11 committed killings when, at the time he got the tattoo,  
12 he had not.

13 He knew what he was doing. His story about  
14 getting drunk is a lie. He wanted the status, so he got  
15 the tattoo. It was false bluster right on his face.

16 Remember the testimony that over time, MS-13  
17 reduced the use of tattoos because they aided law  
18 enforcement. Buso specifically admitted during  
19 cross-examination that blustering, bravado, has replaced  
20 tattoos as a way to gain status. And just as Buso's  
21 tattoo was false blustering, so was Alvin's blustering  
22 on those phone calls with Junior. And we'll get to  
23 that.

24 But Buso told another lie. He testified  
25 about a shooting he was involved in, where he wore a

1 visor to cover the huge "MS-13" on his forehead. He  
2 said this allowed him to approach the victim.

3           However, the witness that directly followed  
4 Buso -- this was Officer Jay Choi -- contradicted this  
5 account. Officer Choi, who investigated that crime  
6 scene, testified that Buso was identified by the victim  
7 by the huge "MS-13" on his forehead. It wasn't covered  
8 like a visor -- with a visor.

9           Buso's tattoo was a lie, an example of false  
10 bravado plastered across his face. He obviously lied  
11 about how he got it, with that ridiculous story about  
12 being drunk.

13           And we know from Officer Choi that Buso lied  
14 about how he covered it up with a visor. It wasn't  
15 covered up. It was how the police found him.

16           Everything Buso told you was a lie, and that  
17 was the government's first gang member witness.

18           You learned something else critical to this  
19 case during Buso's testimony, something you would see  
20 over and over again, week after week. You learned that  
21 such testimony, that the testimony of all of the  
22 government's gang member witnesses, is bought and paid  
23 for by the government, not with money -- although Junior  
24 got money, too -- but with something far more valuable:  
25 freedom, a chance to get out of jail. For someone

1 facing a life sentence -- and numerous government gang  
2 witnesses testified they faced a life sentence -- a  
3 chance to get out before they died of old age is worth  
4 everything. It's worth lying about. They lie about  
5 everything. Homeboys lie to survive in MS-13. And, of  
6 course, they will lie to get out of jail.

7 And they get much more than that. They get  
8 a shot at life here, with lawful status for themselves  
9 and, in some cases, for their families.

10 And I want to digress a little bit about the  
11 process of how a gang member who is a government witness  
12 gets a sentence reduced.

13 As you've heard, these witnesses spend a lot  
14 of time with the prosecutors and agents before they take  
15 the stand and testify, often, numerous meetings over a  
16 period of years.

17 And there is one part of their testimony  
18 that is particularly well-practiced. A prosecutor will  
19 ask: What are you required to do to get a reduction?

20 And the gang witness' answer always is:  
21 Tell the truth.

22 And the next question from the prosecutor  
23 is: Who decides your reduction?

24 And the well-practiced answer is: The  
25 judge.

1 But the reality is that to get a reduction,  
2 the prosecutors have to be of the opinion that the  
3 witness cooperated with the government. They have to  
4 feel that the government member helped them -- helped  
5 their case, supported their theory, their story. To get  
6 a reduction, the prosecutors have to file a motion.  
7 Otherwise, it never gets back before the judge. And if  
8 it never gets back before the judge, they will never get  
9 out of jail.

10 Let's pull up on the screen, please, Buso's  
11 plea agreement. This is Government's Exhibit 125, page  
12 one.

13 Is it up? I don't see it on the screen.  
14 There it is. Thank you, Pam.

15 You could see this is Buso's plea agreement.  
16 This is page one of the plea agreement.

17 Let's go to paragraph 18. It should be the  
18 next slide.

19 It's called "motion for downward departure."  
20 You've learned that in this case, this is a reduction,  
21 this is a departure from the long sentence. And it  
22 starts off with the legal language that describes  
23 technically what the motion is, and it says in the very  
24 last sentence that: The government may seek a reduction  
25 if, in its sole discretion, the United States determines

1 that such a departure or reduction of sentence is  
2 appropriate.

3 There is identical language in every plea  
4 agreement entered in evidence here. And you can see  
5 that for yourself. The plea agreements for everybody  
6 are Government's Exhibit 120 to 125.

7 The plea agreement, this document, is  
8 literally a contract between the gang members and the  
9 prosecution. And this, right here, is the fine print.  
10 And it is always critical to read the fine print. This  
11 is the real deal, and all the government witnesses know  
12 it.

13 They have to give the truth as the  
14 government sees it, which means they have to give the  
15 version of events that matches the charges in this case.

16 As they answered on cross-examination, the  
17 gang member witnesses understand that the prosecutors,  
18 through their sole discretion to move for a sentence  
19 reduction, hold the key to their jail cells.

20 Judge Lee gave a specific instruction on  
21 this issue.

22 Can we please put up excerpts from the jury  
23 instruction regarding plea agreements? The entire  
24 instruction, which you have, is 79.

25 One excerpt notes that the government has



1 the sole discretion to bring the witness's cooperation  
2 to the attention of the sentencing court.

3 Another excerpt emphasizes that a witness  
4 who realizes that he may be able to obtain his own  
5 freedom or receive a lighter sentence by giving  
6 testimony favorable to the prosecution has a motive to  
7 testify falsely.

8 So Buso tells all of his ridiculous lies  
9 about his forehead tattoo, and he gets a sentence  
10 reduction.

11 He testified on cross that he received life  
12 without parole in 2005, and in 2011, already a  
13 government witness, his sentence was reduced to 15 years  
14 pursuant to this type of motion by the government.  
15 Maybe it will be reduced again as he keeps telling lies.  
16 He sure knows how to play this game.

17 And we know that the gang member witnesses  
18 are not reliable. All of them are liars. They lie when  
19 in the gang, and when caught they have a motive to keep  
20 lying, this time to jurors.

21 Buso tells these dumb lies and he gets  
22 rewarded, down to 15 years from life. Maybe he'll get  
23 more.

24 And as the case got a little further into  
25 witnesses, you learned of another kind of reliability in

1 this matter, and that of the phone call translations on  
2 which the government relies so heavily in its case  
3 against Alvin and others.

4 This is highly subjective, and that's  
5 something that you learned. FBI contract language  
6 monitor or CLM, as they were called, Liliana Portwine,  
7 testified that when translating terms, it's necessary to  
8 skew it one way or the other.

9 You may recall FBI contract language monitor  
10 Sandra D'Sa testified that when the translating is a  
11 gray area, and that when working closely with the FBI,  
12 she felt like she was part of the prosecution team  
13 putting the case together.

14 FBI contract language monitor Vania Vargas  
15 admitted that CLMs are qualified only to provide the FBI  
16 with summary translations, not the transcripts, and  
17 not -- they are not qualified to testify.

18 So we learned from all of these CLM  
19 witnesses during the cross-examination of each one that  
20 they are not certified, and that although their  
21 unauthorized translations are subject to review, they  
22 can ignore any suggestions made by review. So this is  
23 really just their unauthorized product.

24 And in this case, they sometimes even  
25 reviewed each other. The bottom line is that the

1 accuracy of the transcripts in this case, the ones made  
2 of calls by Junior on which the government relies, are  
3 highly suspect.

4 And the government says they have a waiver  
5 in this case for this, but fundamentally, these  
6 individuals were not qualified to do what they did here.

7 Let's move to Junior himself. The  
8 government called FBI Special Agent Brenda Born before  
9 Junior. Special Agent Brenda Born testified that Junior  
10 had been working for the FBI as a CHS, a confidential  
11 human source, since November 2005, and that she had been  
12 his handler from October 2009 to September 2014.

13 Agent Born testified that when the FBI  
14 started using Junior, he was just a homeboy, and that  
15 during his time as a CHS he worked his way through the  
16 ranks to become leader of an MS-13 clique known as  
17 Silvas.

18 She testified that Junior was not authorized  
19 to commit any crimes and that, except for once bringing  
20 a joint to a meeting with another gang member, he did  
21 not commit any crimes.

22 Moreover, as far as she knew, he did not  
23 commit any acts of violence while a CHS.

24 According to FBI Agent Born, therefore,  
25 Junior rose through the ranks of MS-13 based on bluster

1 alone.

2           You then heard from Junior himself, Jose  
3 Aparicio Garcia. He told you he started with the FBI as  
4 a CHS in 2005. And he told you that he testified in a  
5 gang case right here in this courthouse in 2006.

6           He told you he became a leader, the first  
7 word, of Silvas in 2012.

8           He testified under oath that he did not  
9 commit any acts of violence to become first word, and  
10 that he became first word after having testified in this  
11 courthouse against other gang members.

12           Think about this. Based on what you've  
13 heard throughout the government's case all of these  
14 weeks, the prosecution has repeatedly emphasized that  
15 gang members get green-lighted for cooperating with the  
16 government. They get killed.

17           Any and all cooperation with the government  
18 gets a homeboy killed. Even the suspicion that a  
19 homeboy is cooperating gets him killed. Homeboys are  
20 not allowed to talk to the police at all. They are not  
21 allowed to help the government at all. They are not  
22 allowed to testify at all. This violates all the top  
23 rules of the gang.

24           And yet Junior not only cooperates with the  
25 government, he testifies in open court, just like you

1 saw him do, but also back in 2006, in another gang case.  
2 He not only does not get killed after being a snitch, he  
3 gets promoted. He works his way from homeboy to first  
4 word, after testifying in court for the government, and  
5 he does it, according to the government, without  
6 committing any of the acts of violence the government  
7 says are required to advance in MS-13.

8 How is that possible?

9 When asked about this on cross-examination,  
10 Junior boasted that he was the smartest one in the gang.  
11 He knows how to talk to homeboys, he says. He knows how  
12 to manipulate them. He is, by his own admission, a  
13 master manipulator. He has to be. He is living proof,  
14 literally living proof, that false bluster can keep you  
15 alive and get you status in MS-13. It can get you from  
16 snitch to first word on bluster alone.

17 Excuse me.

18 The government repeatedly attempted to  
19 dispel the notion that you could lie to advance your  
20 reputation by suggesting, through various witnesses,  
21 that MS-13 has some sort of verification process, that  
22 the defendants can't be blustering.

23 Junior is living proof that MS-13 does not  
24 do its homework. There are no background checks. There  
25 is no verification process. There is Junior. He is

1 proof of that. Junior is proof that anyone can make it  
2 in MS-13 on bluster alone.

3 Here's an example of the bluster. Let's  
4 pull up Government's Exhibit 18A-1. Here's the first  
5 page. This is a conversation between Junior and  
6 Christian Lemus Cerna on May 15th, 2014.

7 And we're at the bottom here, Bates stamp  
8 page 16. "JR" is Junior and "LC" is Lemus Cerna.

9 And Junior says, "That dude that's giving me  
10 bullshit, he already pissed me off, dude. That dude was  
11 bullshitting stone, you know. So we dropped in on him.  
12 And the motherfucker was crying, you know. The rings,  
13 the chains, 'Leave me, leave me those, because they  
14 belong to my wife.'"

15 Lemus Cerna -- "OV" is over voice -- says,  
16 "Oh, yes, yes, yes."

17 Junior says, "All right. Cool, you know.  
18 We, we helped him out, you know. They gave him the  
19 chains and everything, you know."

20 Then the top of the next page, Lemus Cerna  
21 says, "Uh-huh."

22 Junior says, "We took his money and  
23 everything. All right, cool. We told him. All right,  
24 250, I told him, you know. 'Know for sure,' Stone told  
25 him, 'I'm going to cut your finger off, you son of a

1     bitch.'

2                     "'No, no, no,' said the motherfucker."

3                     "'We are going to cut your finger off."

4                     "'No, no, no.'"

5                     "And the son of a bitch started crying, you  
6     know.

7                     So, Junior says to Lemus Cerna, "Where can I  
8     leave my car around here, dude?"

9                     And Lemus Cerna says, "No, keep going  
10    further."

11                    Junior says, "Oh, all right, then. Oh, hey,  
12    you know, that motherfucker did, fool, that motherfucker  
13    pissed me off already, dude. I'm not kidding, you know,  
14    too much ripping off, homeboy. Too much ripping off."  
15    Did you hear what the dude said? That he already sold  
16    him the business."

17                    In court, Junior testified that "dropped in  
18    on him," which was the first part of that quote --

19                    We're done with that.

20                    -- means to attack or to rob him. He also  
21    testified that he wasn't actually there. He heard a  
22    version of what happened, and he takes credit for it.  
23    He takes credit for it as if he was there, but he  
24    wasn't.

25                    And there's another thing to notice here as

1 well. You could see how blustering is the social  
2 currency of MS-13. When Junior talks about violence,  
3 Lemus Cerna says, "Yes, yes. Keep going."

4 And Junior says, "Well, and where do I park  
5 my car?"

6 And Lemus Cerna says, "No, I want to hear  
7 more. Keep going."

8 This is the social currency. Junior knows  
9 this. Junior knows this is what MS-13 members like to  
10 talk about, and they like to falsely bluster, just like  
11 he is falsely blustering. He was not doing any of the  
12 things he said he was, and he's getting gang members to  
13 do the same thing.

14 Junior succeeds in obtaining exactly the  
15 kind of false bluster that he, himself, employs. As  
16 you've heard, he gets Alvin Gaitan Benitez to falsely  
17 brag about decapitating Lil Guasón. But we know this is  
18 all bluster. There is no evidence, aside from the  
19 blustering calls with Junior, that Alvin decapitated Lil  
20 Guasón.

21 You've heard in another call in which Junior  
22 gets Leopardo to boast that he decapitated Lil Guasón,  
23 and you've heard that Solitario boasted to Skinny that  
24 he decapitated Lil Guasón. And Slow, who we will get to  
25 in a minute, testified that Lil Poison -- sorry -- Slow



1 testified that Lil Payaso was the one who decapitated  
2 Lil Guasón. The evidence is a conflicting mess.

3 The government, in their closing, called  
4 Junior a hero. He's not. He's a liar. He uses bluster  
5 to get bluster out of others, and that's literally  
6 Junior's job. He makes money doing that. The FBI has  
7 paid him tens of thousands of dollars to do that.  
8 Blustering gets him a whole lot of benefits.

9 And remember the lie he told about the  
10 immigration help -- he got -- help he got from the  
11 prosecutors? He testified on direct that the letter  
12 from the prosecutors did not get delivered to the  
13 immigration judge, and must have gotten returned, didn't  
14 get the benefits.

15 But on cross, it was revealed that he showed  
16 the letter from the United States Attorney's Office to  
17 the immigration judge. Obviously, because it got  
18 returned, he brought it to court. And so he sought to  
19 stay in the United States.

20 So, even on that small thing he wants to lie  
21 about that, and on cross-examination he was caught in  
22 that lie.

23 More lies. Slow testified that Junior  
24 punched a young man in the face and left him bleeding,  
25 an unprovoked attack. This is around the summer of

1 2014.

2 Junior, of course, did not report this to  
3 his handler, Brenda Born. He lies to the FBI. He lies  
4 to everyone. He is a manipulative opportunist.

5 Subsequent to Junior, you heard from Juan  
6 Carlos Marquez Ayala, who was known as Skinny. Skinny  
7 was a heavy drug user. He used marijuana 10 to 15 times  
8 a day, often used cocaine, admits to having used crystal  
9 meth.

10 He was also a drug dealer. He sold crystal  
11 meth, cocaine, heroin and marijuana. He smuggled drugs  
12 into prison for the homeboys.

13 Skinny testified that almost everyone in the  
14 clique went to rebury Lagrima. He throws everyone into  
15 this one. Skinny says he was there, as was Greñas, Lil  
16 Poison, Pesadilla, Lil Evil, Lil Slow, Duende, Leopardo.  
17 This count is a mess and they're making Alvin the fall  
18 guy for it.

19 And it's not just the prosecution trying to  
20 do this. Yesterday you heard Solitario's lawyer try to  
21 blame Lil Guasón's murder on Alvin. But Solitario told  
22 Skinny that he, Solitario, stabbed and decapitated Lil  
23 Guasón. Solitario admitted to Skinny and also told  
24 Skinny that he liked it, that he played soccer with Lil  
25 Guasón's head.

1                   We also know that soon after Lil Guasón's  
2 murder, Solitario took off for Kansas City with others,  
3 where he was ultimately arrested.

4                   In her closing, Ms. Martinez said that this  
5 flight by Solitario and others, quote, establishes  
6 guilt.

7                   But that works both ways. Not fleeing  
8 reflects Alvin's innocence. Alvin stays at home. Alvin  
9 knows what he says is all bluster. So why would he need  
10 to flee after a murder he did not commit?

11                  Skinny also testified that he was not  
12 truthful when Junior -- when they, Skinny and Junior,  
13 spoke on the phone. Skinny lied on the phone to Junior.  
14 Skinny testified that all homeboys lie, always. He  
15 testified that they lie to each other. They lie to  
16 survive. They lie to Junior. Junior lies to them.  
17 They lie to him.

18                  Also recall it was Skinny who wanted Lil  
19 Guasón dead for stealing money from the mother of his  
20 child, her money, not the gang's money. This was not an  
21 act in furtherance of racketeering activity. It wasn't  
22 even the gang's money.

23                  The next witness you heard from, or you  
24 next -- another witness you heard from was Araely  
25 Santiago Villanueva. He was known as Slow or Lil Slow

1 or Spider. He added to the confusion. He was the one  
2 who said that it was Lil Payaso who cut off Lil Guasón's  
3 head.

4 From Slow, you learned that Douglas Duran  
5 Cerritos, known as Lil Poison, was the leader of PVLS at  
6 the time that Lil Guasón was killed; that Lil Poison  
7 participated in the murder of Lil Guasón. After the  
8 murder, he made the decision to go to Kansas City with  
9 other gang members to flee the police. Lil Poison,  
10 Slow, Solitario and Leopardo fled to Kansas City. Alvin  
11 did not go with them.

12 Slow testified that they went to Kansas City  
13 to flee the police. Alvin did not flee.

14 Slow testified that while others fled, Alvin  
15 stayed at his house and just went to work. And you can  
16 recall, this was actually brought out on redirect by the  
17 government, by Ms. Martinez. She pressed Slow, "Where  
18 was Alvin when the others fled?"

19 And Slow said, "Alvin was at home. Alvin  
20 was going to work." Alvin, the fall guy, the guy who  
21 falsely brags about decapitating Lil Guasón, stays at  
22 home while others flee.

23 This was later corroborated by Detective  
24 Raymond Betts, who testified that he had to go to Kansas  
25 to arrest a number of MS-13 members, but he arrested

1 Alvin at home.

2 Also recall how Detective Betts found Alvin.  
3 According to his testimony, he surveilled the  
4 Fairfax Court when Alvin had a ticket. Alvin showed up  
5 for his traffic ticket, and they followed him home.

6 So to recap, while others fled, Alvin Gaitan  
7 Benitez stayed home, worked and showed up in Fairfax for  
8 a scheduled court appearance on a traffic citation.  
9 These are not the actions of someone who has just  
10 committed a murder.

11 One more thing about Slow. During the  
12 prosecution's closing argument, and in an attempt to  
13 bolster Slow's testimony, Ms. Martinez suggested that  
14 Slow was, well, too slow to be able to consistently lie  
15 about the same people.

16 Ladies and gentlemen, we know from weeks and  
17 weeks of testimony that the government witnesses spend  
18 many, many hours over an extensive period of time being  
19 coached by the government before coming here to testify.  
20 They just have to learn who is charged and what count  
21 and repeat it in court. That's easy. No one is that  
22 slow.

23 Right after Slow, you heard from Jose Del  
24 Cid, known as Duende. Duende, as you recall is a  
25 lifelong brutal killer. He participated in every

1 murder, as well as the attempted murder charged in this  
2 case, and numerous other violent crimes here and in  
3 El Salvador. And he is also a liar who is trying to  
4 save himself from dying in prison.

5 Duende testified that he directly  
6 participated in three murders in El Salvador over a  
7 period of at least six years before coming to the United  
8 States. Once in the United States, over the next two  
9 years, from approximately 2012 to 2014, he and Lagrima  
10 stabbed a man in Alexandria. Duende assaulted a  
11 one-armed man with a hammer. He assaulted another man  
12 with a bat. He stabbed a 12-year-old child in the chest  
13 in Fairfax. He pulled a gun on a kid in Alexandria.

14 He was involved in the plan to kill  
15 Peligroso. He participated in the murder of Lagrima.  
16 He participated in the murder of Lil Guasón. And he  
17 participated in the murder of Julio Urrutia.

18 Considering this horrifying violent spree in  
19 just the two-year period he was in the United States,  
20 which ended only upon Duende's arrest, it is impossible  
21 to credit Duende's claims that he was involved in merely  
22 three murders in El Salvador in the six years prior. It  
23 just doesn't ring true. He's a liar. He admits what is  
24 already known here, while understating his own level of  
25 violence elsewhere.

1                   And I want you to notice something else  
2 about Duende's testimony. He deflects blame onto  
3 others. He refuses to take direct personal  
4 responsibility for his actions. It's always someone  
5 else who holds the knife.

6                   With respect to that stabbing in Chirilagua  
7 in 2013, Duende said it was Lagrima who held the knife.  
8 It was Lagrima who did the stabbing. It is always  
9 someone else, Duende testified, or it was someone else  
10 who told him to do it. That's what he does. He  
11 deflects blame and he is trying to shift blame to Alvin  
12 for his own crimes.

13                  If you recall, he was arrested a number of  
14 times. One of those times he gave a fake name for  
15 himself, Gabriel Cabrera is what he told the police, and  
16 he got released. They weren't looking for Gabriel  
17 Cabrera. He lies to get out of jail. He lies to  
18 survive.

19                  Duende is a six-time murderer, at least.  
20 Moreover, he stabs children in the chest. He sticks  
21 guns in their faces. He has no conscience.

22                  But the government presents him as a witness  
23 and says, the only reason he is here is to tell the  
24 truth.

25                  The only reason he is here, ladies and

1 gentlemen, is to save himself, and he will do anything  
2 to save himself. Duende has a lot of violence to work  
3 off by cooperating. His plea agreement in this case --  
4 it's Government's Exhibit 123 -- provides immunity from  
5 any further prosecution of the crimes charged here.

6 But it goes much further than that. The  
7 United States Attorney's Office obtained immunity for  
8 Duende in all the Northern Virginia jurisdictions where  
9 all of these crimes and all these other violent acts  
10 occurred.

11 And, of course, Duende hopes to get  
12 immigration benefits once he reduces his sentence and is  
13 ultimately released after testifying here.

14 Duende is ruthless. He will say and do  
15 anything he needs to. He killed all of those people.  
16 He, Lil Poison, Slow and others killed Lil Guasón.  
17 Duende did this killing.

18 And he and the other government witnesses  
19 now need to throw some blame on Alvin. They need to  
20 make him the fall guy so they can work off their time.  
21 Duende's testimony and the testimony of other witnesses  
22 cannot be trusted.

23 In her opening and again in her closing,  
24 Ms. Martinez says Duende is, quote, no choirboy, as if  
25 this claim of what Duende is not somehow makes him



1 believable. No, Duende is no choirboy. He is a  
2 ruthless killer and a habitual liar, who throws blame  
3 everywhere else. And when that stops working, he signs  
4 a plea deal to work off his time by falsely blaming  
5 others. And he still deflects blame, even here.

6 That's not proof beyond a reasonable doubt.  
7 It's not proof at all. Duende killed Lil Guasón. But  
8 now, in order to save himself, he needs to cast blame on  
9 others. He lies to survive.

10 The final witness called by the government  
11 was Detective Raymond Betts. As discussed earlier,  
12 Detective Betts testified that he had to go to Kansas  
13 City to arrest Lil Poison and others. But he arrested  
14 Alvin Gaitan Benitez at his home. When others fled,  
15 Alvin stayed home. When others fled, Alvin went to  
16 court to face a traffic ticket.

17 Alvin knew he was blustering. He did not  
18 need to leave town. Blustering is not a crime.

19 The final witness of the entire trial was  
20 Jose Lopez Torres, also known as Greñas. He took the  
21 stand without a deal with the government. Every other  
22 member of MS-13 who took the stand did so in return for  
23 a promise of freedom, a promise that they would not be  
24 prosecuted for their crimes and a promise that once  
25 released from prison, they and their family members

1 could stay in the country. Various members got various  
2 promises.

3 In stark contrast, Jose Lopez Torres, an  
4 MS-13 member, was promised nothing. His testimony will  
5 not result in his release some day. His family will not  
6 be given immigration benefits. He will not go into the  
7 Witness Protection Program.

8 The best case scenario for Mr. Lopez is that  
9 he will be looking over his shoulder for the rest of the  
10 life while in prison. The worse case is he will be  
11 killed in short order for taking the stand and  
12 testifying about the gang.

13 Mr. Lopez Torres knows he isn't going to get  
14 a prize for testifying. Testifying about MS-13 is not  
15 allowed, period. MS-13 does not do nuance. And he  
16 implicated Lil Evil and Marciano and others. This isn't  
17 going to get him a prize. It's likely to get him  
18 killed.

19 His testimony, ladies and gentlemen, was  
20 credible. He told you that he and Skinny dug a hole for  
21 Lagrima's reburial, and that Skinny, Slow, Duende and  
22 Lil Evil reburied Lagrima. His credible testimony was  
23 that Alvin was not there.

24 Ladies and gentlemen, the government carries  
25 a heavy burden of proof beyond a reasonable doubt, and

1 they have not, and cannot, meet that burden with respect  
2 to Alvin Gaitan Benitez. He is just the fall guy. He  
3 stays home when the others flee.

4 Junior played Alvin. Junior is all bluster  
5 and got Alvin to bluster back at him, while Junior knew  
6 it was all being recorded.

7 Lil Poison played him, killing Lil Guasón  
8 with Duende and then fleeing to Kansas City, leaving  
9 Alvin back here to take the fall. And Duende, one of  
10 the real killers, got on the stand and lied and blamed  
11 others, including Alvin, for the murders so that --  
12 Duende committed, so that Duende himself can go free.

13 The government's case is built on all these  
14 lies and bluster. Every single gang witness the  
15 government presented to you was biased and had very  
16 powerful motives to lie.

17 And even before they agreed to cooperate,  
18 they were liars. They lie to survive. They lie to get  
19 what they want. They get the indictment and they  
20 conform their testimony to it.

21 We heard that some of the witnesses, such as  
22 Duende, had years of meetings with prosecutors and  
23 agents to get their story straight. Testimony that is  
24 so obviously biased and shown to be untruthful is not  
25 proof beyond a reasonable doubt.

1                   For all these reasons, ladies and gentlemen,  
2 we would ask you to return the only verdict permitted by  
3 law where credible evidence beyond a reasonable doubt is  
4 so lacking, as it clearly is in this case, and find  
5 Alvin Gaitan Benitez not guilty of Count 5 and Count 6.

6                   Thank you.

7                   THE COURT: Thank you.

8                   You may proceed.

9                   MR. SALVATO: Thank you, Your Honor.

10                  CLOSING ARGUMENT BY DEFENDANT LEMUS CERNA

11                  MR. SALVATO: Good morning, ladies and  
12 gentlemen.

13                  Good morning, Counsel.

14                  Good morning, Mr. Cerna.

15                  I just want to echo a couple things that  
16 Mr. Zimmerman said, just on a personal level. I want to  
17 thank you for your jury service. Jury service is --  
18 it's a duty and, more importantly for your personal  
19 lives, it's a personal inconvenience. It takes you away  
20 from those routines that you have, your kids, your  
21 family, your regular phone calls that you might make.

22                  So I cannot tell you how much I appreciate  
23 you coming every day, going through security twice,  
24 coming here and paying close attention, taking notes.  
25 And I really appreciate your personal service and

1 your -- the personal inconvenience that you've taken in  
2 this case.

3 Ladies and gentlemen, Christian Cerna is  
4 charged in Count 6 of this indictment. And I want to  
5 emphasize two things during my closing argument.  
6 Christian Cerna is not guilty, and he's not guilty for  
7 two reasons.

8 First, as an overall matter, Count 6, the  
9 whole event was not in furtherance of an enterprise.  
10 The government must prove that the purpose of the  
11 actions involved in Count 6 were to gain entrance,  
12 maintain or increase someone's position in an  
13 enterprise, I'm going to speak about that in a little  
14 bit.

15 The second reason, ladies and gentlemen,  
16 that Christian Cerna is not guilty of Count 6 is the  
17 government cannot prove to you beyond a reasonable doubt  
18 that he is guilty of the murder of Lil Guasón, or that  
19 he is guilty of aiding and abetting that murder. So,  
20 for those two overarching reasons, Mr. Cerna is not  
21 guilty of Count 6.

22 And I want to make it very, very clear,  
23 because there's been a lot of innuendo and testimony and  
24 transcripts, some exhibits, he is not charged in  
25 Count 4 -- and the government hasn't argued that -- and

1 he is not charged in Count 5, the reburial. Okay.

2 So, while there's testimony and transcripts,  
3 et cetera, about the reburial and whether Mr. Cerna was  
4 involved in the reburial, Mr. Cerna is not even charged  
5 in Count 5.

6 He only faces the charge in Count 6.

7 He's not in Count 1. His notebook with the  
8 shapes and containers was found in the car -- not  
9 charged in Count 1. He was only charged with respect to  
10 Count 6. And Count 6, ladies and gentlemen, quite  
11 bluntly, is an absolute mess.

12 As an overall matter, the government really  
13 can't have it both ways in this case. And we've seen a  
14 lot of that from Ms. Martinez in her closing statement  
15 and during the evidence. They can't tell you that MS-13  
16 is very well organized, there are specific rules, you  
17 have to follow the rules and, therefore, it's this  
18 enterprise, then turn around and say, well, not  
19 everybody knows the rules. The rules can change.  
20 Everybody has a different understanding of the rules,  
21 and really, anybody that's in a gang who does any  
22 criminal act, it must be gang-related or for the purpose  
23 that the government must show is part of the RICO  
24 statute.

25 That's not the law. And you've seen this

1 flip-flopping during the government's case over the past  
2 six weeks and during closing argument.

3 Ms. Martinez told you, as long as they do  
4 something with the gang in mind, that's good enough.

5 And you'll see through the jury  
6 instructions, that's not good enough. That isn't the  
7 standard. Having the gang in mind does not qualify as a  
8 RICO offense.

9 Tattoos. You've seen a lot of testimony  
10 about tattoos. If you have tattoos, that's really bad.  
11 If you've got the 503, you've got the MS-13, that's  
12 really bad. That shows something. That shows your  
13 status in the gang.

14 But if you don't have tattoos, like  
15 Mr. Cerna doesn't have a tattoo anywhere on his body,  
16 well, that's really bad, because he's a young guy and,  
17 you know, you're not supposed to have tattoos.

18 So, it's this constant flip-flopping, that  
19 whatever the government has in terms of its witnesses is  
20 good for its case. And that's not the law. That  
21 shouldn't be how you consider things.

22 Detective Saa was the first witness. And as  
23 Mr. Zimmerman said, he told you right off, right out of  
24 the bat, he said, everybody brags. MS-13 witnesses are  
25 untrustworthy, and everybody brags and takes credit for

1 stuff that they didn't do. That's the way you are a big  
2 shot.

3 He also told you that MS-13 members, if they  
4 cooperate, there's one place they don't want to go back  
5 to, which is El Salvador. It's much easier to kill  
6 somebody in El Salvador. They want freedom and to stay  
7 in this country.

8 Detective Saa also told you, importantly,  
9 that green lights are authorized for cooperation. Other  
10 rule violations, such as money issues, as the government  
11 has alleged in Count 6, are *calentóns*, or beatings.  
12 That's the number one rule: green light for  
13 cooperation.

14 Detective Saa also told you, out of the  
15 hundred or so cases that he's investigated, that  
16 personal beefs do exhibit, that gang members do things  
17 outside of the structure of the gang, such as domestic  
18 assaults, was his example.

19 Detective Saa never told you that an  
20 enterprise, such as the government alleges here, gives  
21 green lights for sleeping with a girlfriend or an  
22 ex-girlfriend, ever. Detective Saa, the government's  
23 first expert, their gang expert, said that -- he never  
24 said that anything like that ever happens.

25 You heard the same thing from Buso. And



1 it's interesting with Buso, as Mr. Zimmerman touched on  
2 for a second there, you kind of see the past and the  
3 future in terms of these cooperators, when Buso took the  
4 stand.

5               These cooperators are facing life in prison.  
6 You saw, Buso got a life sentence with no parole, no  
7 possible release. That was his past.

8               However, the future for him is that he still  
9 got in prison -- trouble in prison. Remember that. He  
10 still got his Rule 35.

11              And that's kind of a slight preview as to  
12 what happens with these cooperators. And they can come  
13 up here and preach to you, "Hey, I just got to tell the  
14 truth. That's all I got to do. It's up to the judge."  
15 But you saw in living color what happens to these  
16 cooperators.

17              Buso shot a young kid on a bike in the back,  
18 in front of the kid's little sister, and he got  
19 15 years, and he's expecting immigration help to stay  
20 right here in our community. That's a preview of what  
21 happens to these cooperators.

22              And you also saw a preview between the  
23 interested witnesses and the disinterested witnesses.  
24 The interested witnesses, like Buso, came in and said,  
25 "Hey, I'm going to just come here and help the

1 government. Hey, great, I got my time reduced." He was  
2 very interested in what he had to do to help the  
3 government. And he came in, like Mr. Zimmerman said,  
4 and lied his butt off. Okay. "Visor, MS-13, I had it  
5 pulled down. Nobody could see that."

6 Disinterested witness, Officer Choi, comes  
7 in, says, "Yeah, that was the description. The guy had  
8 a big "MS" on his forehead."

9 Now, nothing happens, though, to Buso. Is  
10 there any evidence that the government intends or has  
11 taken his Rule 35 away?

12 Oh, no, wait a second, Buso, you lied about  
13 that. We know you lied, because Choi came in and told  
14 us something completely different; the very next  
15 witness.

16 Nothing happens. As long as Buso says what  
17 the government wants to hear to get from point A to  
18 point B to convict all of these guys, it's okay. He  
19 gets his 15 years, and maybe he stays in the community.

20 And Ms. Martinez talks about justice.  
21 There's no justice for the young man that he shot, or  
22 the sister that witnessed that, to have Buso's sentence  
23 reduced from life to 15 years, and have him in our  
24 community. That's not justice.

25 And the government would have you believe

1 that all these guys can do all of this stuff, right,  
2 shoot the kid, try to shoot your own mother, machete a  
3 guy, do all of these acts of violence, okay, but they  
4 would never lie to get a sentence reduction. I mean,  
5 that would be really wrong, right?

6 I mean, that's basically what the government  
7 has told you. We can do all -- they can do all this  
8 stuff, but, lying to you, 18 people -- 12 people? No,  
9 there's no chance they would ever do that to save  
10 themselves.

11 That is an absurd, preposterous position to  
12 take.

13 A lot of this depends upon the translations  
14 and the linguists. And as Mr. Zimmerman indicated, the  
15 linguists are not even qualified to translate. They got  
16 a waiver. They skewed things for the government. They  
17 admitted that on the stand.

18 These linguists are only to provide  
19 summaries, not translations. Mr. Aguilar told you that  
20 he, in fact, was briefed by the agents.

21 And the Court will tell you in its jury  
22 instructions -- this is jury instruction 92 out of 109:  
23 You were specifically instructed that whether the  
24 transcript correctly or incorrectly reflects the content  
25 of the conversation, or even the identity of the

1 speakers, is entirely up to you. You can use your own  
2 examination of the transcript and all of the evidence  
3 that came in.

4 So, the government's premise, their basis,  
5 is that these transcripts are completely accurate and  
6 transcribed properly. And we would submit to you, for  
7 various reasons, and certainly the fact that these  
8 linguists are not even supposed to testify, or qualified  
9 to testify, that the transcripts are not accurate.

10 And, Ms. Martinez did a great job in beating  
11 up the interpreter or translator that Mr. Castillo  
12 called, did a great job with her.

13 But she had access to a lot of things that  
14 the defense didn't have, because of what their witnesses  
15 said that they did.

16 This lady, this defense witness, at least  
17 took notes that were recoverable, that Ms. Martinez  
18 could ask her about.

19 What did the linguists do in this case?  
20 They erased every note. They typed over their summaries  
21 to produce these transcripts. There is no note at all  
22 that's been produced to you from what these linguists  
23 initially or originally heard on these transcripts, not  
24 one note.

25 Not one note from Agent Uribe, who literally

1 can't go -- and, you know, we've watched him, you've  
2 watched him. He can't go five minutes without  
3 scribbling out a note.

4           There's no notes from Uribe to the  
5 linguists. There is nothing from the linguists back to  
6 Uribe, because everything has been erased. That should  
7 give you reason to pause about whether these transcripts  
8 are accurately transcribed.

9           Drowsy told you again, the leader makes a  
10 decision. Cooperation equals green light. Nothing  
11 about an ex-girlfriend's baby's mother.

12           You heard from Demente. Demente is really  
13 when you first saw that people brag about stuff that  
14 they didn't do.

15           He said, um, the clique leaders make the  
16 decision, et cetera. He lied about Leopardo, about  
17 Christian. He portrayed Christian as very  
18 sophisticated.

19           And when I showed him the notebook, I said,  
20 "Isn't this a guy just learning his triangles and shapes  
21 and seasons?"

22           "No, he's very sophisticated."

23           He still battled me on that, battled me on  
24 that, battled me on that. And it's really the first  
25 example of how the cooperators are not only trying to

1 get out of prison early, but they also lie about each  
2 other.

3 I asked Demente -- and I think Mr. Aquino  
4 did -- tell me about Duende. Tell me about Del Cid.  
5 The good guy? Okay?

6 Demente told you, he's a good guy, right?  
7 Duende, good guy, not violent at all; never saw Duende  
8 with a gun, never saw him do anything violent, not a  
9 devil worshiper. That was an absolute, outright lie.

10 And the government took Duende under its  
11 wing in opening. They said Duende's role in Lil Guasón  
12 was to chop at his legs after he was dead, and he was  
13 there for other murders.

14 Now that's the understatement of, if not  
15 this year, of the decade. And you see this bragging  
16 about this very issue.

17 In the government's closing, they put up a  
18 transcript from Christian, where Christian said, "Hey, I  
19 broke Lil Guasón's legs after he was dead."

20 Well, he didn't do that. In fact, Duende  
21 said from the stand -- and Ms. Martinez said in the  
22 opening -- that it was Duende who did that. So, here's  
23 Christian bragging about something in the tapes, if the  
24 tapes are even accurate, that he didn't do.

25 Demente also told you that family, his wife,

1 mother, father, sister, and obviously that respect has  
2 to be given.

3 Obviously, Duende didn't know that. And how  
4 many times have we seen, "Let the record reflect the  
5 hand signs" and "the devil horns" and all that.

6 Well, the government didn't show you, "Let  
7 the record reflect Duende holding a shotgun to his  
8 mother. Let the record reflect Duende is chopping at a  
9 man's arms while he is tied to a tree."

10 And the final, real proof of the crazy  
11 bragging that goes on with Demente is, Demente told you  
12 that he parades around the sector, he drives around  
13 these four blocks, walks around these four blocks, he  
14 sold marijuana twice.

15 But Junior tells you that Demente brags to  
16 him that Demente sold \$6,000 worth of methamphetamine  
17 and cocaine. That's the amount of crazy bragging that  
18 these guys are doing to Junior and to others, to  
19 everybody.

20 As to the plea agreements -- and  
21 Mr. Zimmerman covered this a little bit, but Judge Lee,  
22 with all of his power, where he sits, with all the power  
23 of a Federal Court, he cannot, he cannot, on his own,  
24 give a reduction in someone's sentence under the  
25 criminal rules.

1           The government has the sole discretion to do  
2 that. He can't do it on his own. So if he's sitting  
3 here and watching these witnesses and say, "Wow, I  
4 thought this guy was really good. He should get a  
5 reduction in his sentence. I want to give this guy a  
6 reduction in his sentence." He can't do it. He is  
7 powerless to do it.

8           The government has to, in its sole  
9 discretion, come before Judge Lee and say, "Reduce  
10 Duende's sentence." "Reduce the sentence of Buso." He  
11 has no power to do it, which is in a lot of ways a  
12 shame. It's up to the government only.

13           And the Court has told you how you must look  
14 at these cooperators' testimony.

15           The jury must determine whether the -- and  
16 this is in instruction 78 -- whether the testimony of  
17 the alleged accomplice has been affected by  
18 self-interest -- yeah, I want to get out of jail and not  
19 go to El Salvador -- or by an agreement -- yeah, I've  
20 got an agreement where it's up to them to get me out of  
21 jail -- or by his own interest in the outcome of this  
22 case.

23           Now, Duende has to cast a large net, and I  
24 want to get to that in a second. But Duende has to cast  
25 a large net. If he says, "Listen, you know, yeah, I



1 killed Lil Guasón. You know, that stuff about the dull  
2 knife, that was all ridiculous."

3 I mean, the idea that Duende brought a dull  
4 knife, given his resumé in terms of violent acts, to Lil  
5 Guasón, that's absurd.

6 Yeah, "but I did it," or, "maybe just  
7 Benitez did it." He has to cast the net as wide as he  
8 can, to pull in people like Solitario, to pull in people  
9 like Christian, because that gets him out of jail,  
10 because the government is going to be happy with that.

11 They're not going to be happy with "he did  
12 it" or "Benitez did it alone." They need a wider net.

13 Which brings me to Junior. Ms. Martinez  
14 indicated that, um, she feels Junior is a hero.

15 I see Junior as a habitual manipulator and  
16 liar. The way he's able to lie and blame others and  
17 make up outlandish stories is certainly absurd. Okay?

18 Just his buying of the marijuana cigarette,  
19 spent 20 minutes with him, like, "Yeah, you know, I got  
20 it in my neighborhood. No, actually, I rolled into DC.  
21 I don't remember where. It was southeast DC for sure.  
22 Yeah, I remember southeast DC. But I don't remember how  
23 I got there, who I bought it from; just some random dude  
24 on the street, I guess."

25 It's a complete absolute lie. That's not

1 heroic.

2 When he talked about and gave the song and  
3 dance to you guys about, "Hey, the letter, I didn't get  
4 the letter. It was undelivered." That's bull. He got  
5 the letter and he delivered it to the judge. He's lying  
6 about those things, those little things.

7 Ms. Martinez propped him up and said, "Hey,  
8 you're employed, aren't you?"

9 "Yeah, full time."

10 That was a lie. And that was an attempt to  
11 ingratiate himself to you guys, to make him look better.  
12 But as you saw during my cross-examination, he  
13 completely lied to the Federal Bankruptcy Court four  
14 blocks away, when he said he had no income, no  
15 employment, and nothing, when he was trying to get  
16 himself out of massive credit card debt, which got so  
17 massive that Ms. Martinez was able to object as  
18 cumulative.

19 That's not heroic. The Bankruptcy Court,  
20 I'm sure the bankruptcy judge doesn't believe that's  
21 heroic. The creditors don't believe it's heroic. That  
22 is not a great and heroic person to keep in the  
23 community, lying to Federal Courts, running up debt.

24 He also told you that he was just on the  
25 phone with Stone during this robbery, that he wasn't

1 really there.

2 I would submit to you, if you look at the  
3 transcripts that Mr. Zimmerman put up, that's a  
4 bald-faced lie. So Stone is in there robbing people,  
5 cutting finger people -- cutting fingers off, and he's  
6 on the phone with Junior while all this is going on?

7 Come on. I mean, I was born -- not born  
8 yesterday, right? You don't -- when you go through that  
9 exit sign, you don't leave your common sense at the  
10 door. "Hey, dog, I'm over here chopping fingers off."

11 "Oh, really? Hold on one second, man. I'll  
12 be right back."

13 That's baloney.

14 There is no way that Junior, Jose Garcia,  
15 put on his green card application that he was in MS-13  
16 and committed all these acts of violence, like he told  
17 you.

18 Now, you haven't seen the application.  
19 There is no way that he said that.

20 If we're allowing these folks to perpetrate  
21 that kind of lie, what else is he lying about?

22 He is no hero. And if he moved in next to  
23 you or me, I don't think you guys would open the windows  
24 and say, "Junior, what's up?" Love it that -- the fact  
25 that, "Hey, honey, a hero just moved in next door."

1                   You know, he's got a lot of weird guys  
2 coming over, he's doing some stuff, but don't worry,  
3 because he reports everything to the FBI, like when he  
4 punched that guy at Tyson's Corner, sure he told Agent  
5 Born about that. Don't -- "Hey, let's have him over.  
6 He's heroic."

7                   And you see that my guy is trying to be a  
8 big shot. He's trying to brag it up to Junior. Because  
9 that's how -- that's what you do. You try to brag it  
10 up. He's 18 when he's rolling around the woods with  
11 Junior. Junior's 33 years old. He's a boy. Junior's a  
12 man.

13                  East Coast leader of the clique. Can you  
14 imagine? You know, you get somewhere, you get some  
15 status or some rep or something just by bragging, with  
16 no verification, no nothing? Right?

17                  You go from Mr. -- you know, for anybody who  
18 knows football, from Mr. Irrelevant in the draft to a  
19 top five pick, right? He's just, "Yeah, I went to the  
20 University of Miami. I caught 80 passes." You're just  
21 bragging, because nobody is looking at what really  
22 happened.

23                  These grave sites were well-known. There  
24 was 20 guys or so mentioned. Even down in El Salvador  
25 they were well-known. The FBI knew that there was grave

1 sites.

2 And what the Court said about my guy taking  
3 Junior to a grave site that he knew about -- and the  
4 Court instructed you on this, it's in your instruction  
5 packet -- that that is not to be considered evidence as  
6 to Count 6. I urge you to read that. Don't let the  
7 smoke and mirrors confuse you in terms of what that trip  
8 to the grave sites means. I would ask you to read that  
9 instruction in particular.

10 Then we got to Skinny. Is Skinny really the  
11 genesis of Count 6? No. Skinny is not even charged in  
12 Count 6, right? Although this is supposedly his  
13 girlfriend.

14 Skinny said nothing was ever authorized.  
15 Remember, authorization, structure means RICO. And the  
16 government can't have it both ways, crazy organized but  
17 not crazy organized.

18 Skinny told you his girlfriend is Rosie, not  
19 Belén. He got a girl pregnant, Belén. He is not  
20 married. There is no family. He didn't want Lil Guasón  
21 killed.

22 There was no -- there's no RICO. There's no  
23 purpose here.

24 The government's theory is all about it was  
25 the money and the girl, and Skinny blows both of them

1 away. He didn't care about Belén. He didn't authorize  
2 anything. This was Belén's money. This was not gang  
3 money. Skinny told you that from the stand. Okay?  
4 He's closest to this situation. Skinny told you that  
5 this was not gang money. This was Belén's money from  
6 legitimate employment.

7 So, the government told you in opening,  
8 "Hey, he's stealing from the gang." He wasn't stealing  
9 from the gang. This isn't RICO. There's a difference  
10 between personal beefs and gang activity. And just  
11 because Christian brags about it afterwards doesn't  
12 retroactively mean that was the purpose of any action.

13 Which brings me to Mr. Villanueva. And I  
14 want to talk about Lil Slow in a little bit more detail.  
15 Lil Slow -- and I prepared -- and I'm sorry, I don't  
16 have a clicker, and Chris has been waiting patiently, so  
17 I do have something to put on. Okay.

18 So, this is my, kind of my summary of I  
19 think the main points with Villanueva, okay? Because  
20 now we're really down to, there's no purpose, there's no  
21 motive. Now we're down to the two purported  
22 eyewitnesses, which are Villanueva and Duende, or Lil  
23 Slow and Duende.

24 Lil Slow told you directly that this was not  
25 a gang killing at all. This was a personal beef. It

1 was not a gang killing.

2 He also told you -- and I disagree with  
3 Mr. Chick, and I know he was focused on his own guy, and  
4 I appreciate that. But he told you under  
5 cross-examination that Christian was not at this  
6 meeting.

7 Remember, I went through with Duende, how  
8 close was Villanueva to Christian? Went through this  
9 whole thing with him. "Oh, yeah, Christian was there."

10 But Villanueva, who says he was there for  
11 the entire meeting, told you that Christian was not at  
12 the meeting about Lil Guasón.

13 He also told you Skinny didn't care about  
14 the girl. This was Belén's money. Lil Slow told you --  
15 I think he was hopelessly inconsistent on who actually  
16 did what. He told you that Junior beat up a dude at  
17 Tyson's, although Junior denied that.

18 He said, out of the blue, Cerritos wanted it  
19 to happen. He is using meth and marijuana that night.  
20 And you will see an instruction about that. That  
21 obviously affects his ability to observe things, and  
22 they've got to prove it beyond a reasonable doubt.

23 Other people slept with Belén. Skinny  
24 didn't care about Belén.

25 And he said Guepardo stabbed him in the

1 neck. That's different than what Duende says. And he  
2 said Lil Payaso took his head off, which is different  
3 than what the government says.

4 Let's not lose sight of the fact, no pun  
5 intended, but the guy -- the man can't see. Right?  
6 Remember, he's up there. He's trying to figure out, in  
7 a bright lit courtroom, where are these people?

8 Is Solitario way back there? Where is  
9 Christian?

10 The man can't see. And yet the government  
11 puts him up, with all of this testimony, to prove to you  
12 beyond a reasonable doubt that Christian was involved?  
13 It's not true.

14 Then, we get to Duende.

15 Thank you, Chris.

16 Then we get to Duende. And, I cannot  
17 emphasize to you more of what a liar this guy is. The  
18 dull knife story is absolutely preposterous.

19 And, I want to emphasize one thing to you.  
20 And as horrible as this is, right, in Duende's statement  
21 of facts, which the government says, "Well, we don't  
22 keep every detail in here," but this is a pretty  
23 important fact or detail, don't you think?

24 In his statement of facts, which is in  
25 evidence -- it's one of our exhibits -- what Duende says



1 about Christian's participation -- which they must show,  
2 the purpose and the participation -- his only  
3 participation -- what it says in the statement of facts,  
4 it says: After concluding the guy was dead, then his  
5 head was taken off, after he was already expired.

6 With all this detail in the case -- and the  
7 government is going to get up and say, "You know, we  
8 don't have to put everything in the statement of facts.  
9 It says it right there."

10 All this detail in this case, you've seen  
11 cellphone records and cell towers and blow-ups and  
12 transcripts and thousands of calls, all this minutia,  
13 and on the one critical fact of whether Christian  
14 actually participated in this offense, it says, "After  
15 concluding he was dead..."

16 There is no way the government, who wrote  
17 that document, would say that unless it was absolutely  
18 true. Nothing happened with this guy's head --  
19 unfortunately, anything happened -- but nothing happened  
20 with respect to his head on my guy's even alleged  
21 actions. Because, remember, there's like ten different  
22 people that are supposedly involved in this. Nothing  
23 happened until after he was concluding he was dead.

24 So, ladies and gentlemen, when you look at  
25 Count 6, I would urge to you that Count 6, unlike

1 perhaps some of the other counts or situations that  
2 Lopez Torres told you about, Count 6 is hopelessly  
3 inconsistent. It is hopelessly inconsistent.

4 Is he at the meeting or not?

5 Duende says yes. Lil Slow says no. But Lil  
6 Slow was there. Duende has killed like five people, you  
7 know.

8 Did he stab him?

9 Ah, yeah.

10 Lil Slow said, Guepardo stabbed him in the  
11 neck.

12 Duende doesn't say that.

13 Skinny said Solitario cut off his head and  
14 played soccer with it.

15 But Lil Slow says it was Lil Payaso.

16 Duende said it was Christian, after he was  
17 already dead.

18 Lil Slow says it wasn't related to the gang,  
19 but Duende says it was related to Skinny; it was  
20 actually ordered by Payaso -- which nobody told you.

21 Skinny himself says, he didn't want the  
22 gentleman killed, and it was Belén's money, not gang  
23 money.

24 You've got incredible, like, inconsistency.  
25 And this isn't like, "Hey, was it 10:00 o'clock or was

1 it 11:00 o'clock?" This is the guts, this is the  
2 entirety of the government's case. These are the  
3 elements of the offense.

4 So, the question becomes whether the  
5 government can prove to you beyond a reasonable doubt a  
6 violation of 1959. And this is jury instruction number  
7 15. And please don't just focus on my part of the  
8 instructions. You read them all. The government may  
9 stand up and say, "Well, he didn't tell you this or  
10 that." Read them all. Okay?

11 And what 1959 says -- this is the violation  
12 of law, okay? This is what makes it a federal offense,  
13 not a state offense, because these offenses can still be  
14 state offenses.

15 But for this particular case, it says:  
16 Whoever, for the purpose of gaining entrance to or  
17 maintaining or increasing a position in an enterprise,  
18 either murders -- or then the instruction goes on and  
19 says, aid and abet murder.

20 So, what can the government actually prove  
21 with respect to Lil Guasón? Okay?

22 Thanks.

23 First, if we're ranking them, to use a  
24 football example, in draft order, right, the number one  
25 pick, probably, to kill Lil Guasón out in that park is

1 probably Duende. Right? He's certainly a much more  
2 experienced person in this regard than Mr. Benitez,  
3 certainly than anybody else here. Duende has a vast  
4 amount of experience in terms of killing. And the story  
5 about the dull knife just is absolutely incredible.

6 So, if I'm looking at my draft board, Duende  
7 is number one. Okay?

8 Secondly, I'd point you to what Duende said  
9 initially. I mean, if I'm comparing Duende and  
10 Mr. Benitez, it seems like Duende is the more likely  
11 suspect.

12 But what Duende told you in his -- or told  
13 Detective Ignacio, the very first time when he sat down  
14 to be interviewed by Detective Ignacio, he said,  
15 "Benitez did it by himself. Benitez killed the man."  
16 Okay.

17 And when I asked Duende directly on the  
18 stand, "Who actually murdered him? Who killed him?"

19 He said, "It was Alvin Gaitan Benitez."

20 And, you know, the government's theory is  
21 that this was all about the girl and this was all about  
22 the money.

23 And, you'll see in the phone calls that, at  
24 least what Mr. Benitez -- and this is Exhibit, I  
25 believe, 10A, page five.

1                   Now, remember, this is purportedly all about  
2 the girl, all about the money. But what Mr. Benitez  
3 seems to tell Junior -- and I understand Mr. Zimmerman's  
4 point about the puffing. I get that. And I think that  
5 in itself creates a reasonable doubt for Mr. Benitez.

6                   But what he told you, where Mr. Benitez  
7 seems to say, is that when a -- the first entry by  
8 Mr. Benitez, AG.

9                   MR. AMOLSCH: Sorry.

10                  MR. SALVATO: That's okay.

11                  -- when a person has your information, you  
12 run the risk. The information.

13                  So it seems like if Duende's first statement  
14 to Ignacio is to be believed, that Benitez alone was the  
15 one that murdered the gentleman, there seems to be an  
16 ulterior motive going on here, because out of the blue,  
17 Benitez thinks, "Hey, maybe this guy is cooperating  
18 against me," when a person has your information. So it  
19 seems like there's an ulterior motive or motivation on  
20 the part of Mr. Benitez.

21                  When Duende was asked at first by Detective  
22 Ignacio, what happened out there, you heard no evidence  
23 that he said that Christian did anything with regard to  
24 Lil Guasón; nothing.

25                  And don't forget the testimony of

1 Mr. Chavarria, okay, that was called, I think, by  
2 Castillo's counsel. Chavarria, who gave the ride that  
3 night, told you one person had blood on him. One  
4 person. Okay? And remember the testimony of the  
5 medical examiner and the testimony of the person from  
6 the Smithsonian. The person from the Smithsonian,  
7 again, to backtrack, said he was probably already dead  
8 when his head was removed; probably already dead.

9 And the medical examiner said -- and you can  
10 look at the report -- the carotid artery were cut, that  
11 would result in, I feel, a very quick death and blood  
12 everywhere.

13 And what Mr. Chavarria told you is that when  
14 anybody came back to the car, that there was only one  
15 person that had blood on him. And Mr. Chavarria told  
16 you very specifically that Christian did not have any  
17 blood on him. And, in fact, he sat in the seat next to  
18 him. He didn't have any blood on him. And the FBI even  
19 tested -- the FBI guy, the FBI man, tested that car,  
20 tested that front seat, and there was no blood in the  
21 front seat.

22 So, is Duende attempting to expand now his  
23 universe of people that were involved?

24 Is that a reasonable hypothesis, as that  
25 Mr. Chick told you? Is that a reasonable hypothesis,

1 that Duende is trying to save his own butt by expanding  
2 the circle from what he initially told the police?

3 I would submit yes, that is completely  
4 reasonable hypothesis.

5 Now, let's turn to the aiding and abetting  
6 statute, which is kind of what the government uses as a  
7 fallback.

8 The aiding and abetting instruction, ladies  
9 and gentlemen, is fairly lengthy. I want you to read it  
10 specifically. But essentially it says that knowledge  
11 that a crime is being committed, or even presence  
12 combined with knowledge that a crime is being committed,  
13 is not enough.

14 And this is page 57 of the instructions.  
15 And the instruction that the Court read is very  
16 specific. Okay. The instruction is: The mere presence  
17 of a defendant where a crime is being admitted, even  
18 coupled with knowledge that -- by a defendant that the  
19 crime is being committed, or merely associating or being  
20 around people while the crime is being committed, is not  
21 aiding and abetting.

22 So, you have to look at three questions that  
23 you must answer all three of them affirmatively. And  
24 the government has to prove it to you beyond a  
25 reasonable doubt.

1 Did Christian Cerna participate in the crime  
2 charged? Okay?

3 What is the evidence on that? Okay? The  
4 word of hopelessly inconsistent Villanueva versus  
5 hopelessly inconsistent Duende?

6 Did he knowingly associate himself, did he  
7 seek by his actions to make the criminal venture  
8 succeed?

9 Actions. Participation. The government  
10 cannot prove that to you beyond a reasonable doubt, for  
11 all the reasons that I went through.

12 Finally, we come to Christian's own words to  
13 Junior, okay? And, this is at his bragging highest.  
14 This is the highest he can get. He's sitting in the  
15 general manager's office and he is bragging his butt  
16 off, okay?

17 And at the worst, at the absolute worst,  
18 even if you believe Christian's own bragging to Junior,  
19 a 33-year-old dude that he thinks is the East Coast  
20 leader of MS-13, says, "Did you even get a chance to" --  
21 and the government added in its closing, "to go first?"  
22 Those words are not in there. Okay? It doesn't say,  
23 "Did you get a chance to go first?" That's not in  
24 there. "Did you get a chance?"

25 And he says, "No, man. No."



1 But at least I cut his head off -- which  
2 five other people have been credited with. And  
3 irregardless, or regardless, the gentleman is already  
4 dead, and the medical testimony establishes that. And  
5 mutilation of a corpse, however horrible it is, even if  
6 you believe every word of the government's theory, does  
7 not make Christian a murderer or an aider and abettor of  
8 murder. The most the government can say is that he was  
9 present, perhaps he knew, although he wasn't at the  
10 meeting, but they cannot say beyond a reasonable doubt  
11 that he participated.

12 Ladies and gentlemen, there's no physical  
13 evidence in this case tying Mr. Cerna to this offense.  
14 There's no knife.

15 And the government will say, "Well, it's  
16 later on."

17 Well, if you believe the government's  
18 theory, he's walking around with Junior, not having any  
19 idea Junior is with the FBI, so he wouldn't have any  
20 idea to hide stuff that's associated with this case.

21 There's no knife recovered from my client.  
22 There's no prints on everything that they examine. And  
23 you can look at the Lopez Torres testimony. There is no  
24 blood on any clothes. There is no blood in Chavarria's  
25 car. There is no physical evidence, not one scintilla,

1 connecting Christian Lemus Cerna to Count 6.

2 The only thing you have is Duende and Lil  
3 Slow. And you heard from Detective Betts, Christian was  
4 selling, what, 1.6 grams of cocaine, right? I mean,  
5 just a minute amount. There is no blood, no DNA,  
6 nothing.

7 I'm almost done. I promise. But I want to  
8 end with just a couple of things.

9 You know, this burden is so high because of  
10 the stakes, okay, in any criminal case. Not a civil  
11 case, where it's preponderance. It's not a civil case  
12 where it might be clear and convincing, or probability,  
13 as Mr. Chick so eloquently put out to you. This is  
14 beyond a reasonable doubt. Okay?

15 And, there were -- I saw in the newspaper  
16 the other day, there was 20 people in the past year that  
17 have been exonerated that were convicted by juries in  
18 New York, just in the past year.

19 And I'm sure defense lawyers and prosecutors  
20 stood up before juries in that case and they argued  
21 their case, and maybe those juries didn't quite adhere  
22 to the high standard, or didn't follow the Court's  
23 instructions.

24 But exonerations do happen. You heard the  
25 judge instruct Agent Hicks about that. That's why it is

1 so vitally important to maintain our proof beyond a  
2 reasonable doubt. If there's any reason to doubt in  
3 this case, you must acquit.

4 The Court instructed you on what reasonable  
5 doubt is, what's the definition of reasonable doubt.  
6 And you can think about it in your own minds, okay, and  
7 come up with your own examples. So please don't take my  
8 example as sacrosanct in any way, shape or form.

9 But as the Court instructed you, a  
10 reasonable doubt is a doubt that would cause you to  
11 hesitate in a matter of importance in your own affairs,  
12 not, you know, are we ordering from the courthouse  
13 cafeteria? Are we going to go to the Patent Office?  
14 Are we going to go to Pot Belly's? Okay? In a matter  
15 of importance in your own affairs.

16 So let's put all of this stuff aside, right,  
17 all of this stuff aside, and let's say this case is  
18 about whether a child, your child, my child, should have  
19 heart surgery. Would the quality and quantity of the  
20 government's evidence convince you, without any  
21 hesitation, to have your child have that surgery?

22 And not to be flip, but would Dr. Del Cid  
23 and Dr. Villanueva convince you, without any hesitation,  
24 for your child to roll into that emergency -- to that  
25 operating room?

1                   If you say, "Hey, yeah, of course, that's  
2                   good, no second opinion. I don't hesitate to act. Why  
3                   would I hesitate?" If the quality of the proof doesn't  
4                   rise to that level of a matter in your personal  
5                   affairs -- and you guys don't really know them, you  
6                   don't really know us, you don't know the government --  
7                   but your personal affairs, if it doesn't rise to that  
8                   standard and you hesitate, you hesitate to act, then you  
9                   have reasonable doubt.

10                  Hesitation is doubt. Doubt means not  
11                  guilty. Horrible as it could be and how maybe  
12                  gut-wrenching it could be on all fronts, the only proper  
13                  verdict in this case is not guilty as to Christian Lemus  
14                  Cerna.

15                  Thanks for your time and attention. Thanks,  
16                  guys.

17                  Thank you, Your Honor.

18                  THE COURT: Thank you.

19                  Ladies and gentlemen, we will take the  
20                  morning recess now for 15 minutes. Remember what I said  
21                  not to discuss the case. And we will return in  
22                  15 minutes.

23                  Thank you.

24                  (Court recessed at 11:28 a.m. and reconvened  
25                  at 11:49 a.m.)

1 THE COURT: Ready to bring the jury out?

2 MS. MARTELL: Yes, Your Honor.

3 THE COURT: You can bring the jury out,  
4 Mr. Toliver. Thank you.

5 (Jury present.)

6 THE COURT: You may be seated.

7 All right, Counsel, you may proceed.

8 MS. MARTELL: Thank you, Your Honor.

9 CLOSING ARGUMENT BY DEFENDANT DEJESUS CASTILLO

10 MS. MARTELL: May it please the Court;  
11 Mr. Castillo, government counsel, ladies and gentlemen  
12 of the jury.

13 I want to reiterate what's been said today  
14 about thanking you for your service and thanking you for  
15 paying attention during this case and doing your civic  
16 duty. Mr. Castillo wants to thank you. And on behalf  
17 of myself and Mrs. Ralls, my cocounsel, we thank you as  
18 well.

19 Omar Castillo was not there. He isn't  
20 guilty. And ladies and gentlemen, the government didn't  
21 prove it.

22 You do not have to believe that my client is  
23 innocent. You only have to find that there is  
24 reasonable doubt as to whether he is guilty.

25 Let's remember that the defense is under no

1 obligation to offer any proof of innocence or to create  
2 reasonable doubt. That is the system that we have in  
3 this country. That is the system that's been developed  
4 in order to protect all of our rights.

5 That's why the government has to overcome  
6 the presumption of innocence and remove any and all  
7 reasonable doubt. Ladies and gentlemen, I submit to you  
8 that they have not done that.

9 If you convict Mr. Castillo, that decision  
10 is final. There's no opportunity for second thoughts.  
11 There's no change of heart down the road. So, before  
12 you convict him, you should make sure that he has been  
13 proven guilty to the exclusion of, and beyond any and  
14 all, reasonable doubt.

15 So, what is that? It's a belief so firmly  
16 rooted in the evidence that you don't have to worry  
17 about waking up in the middle of the night, thinking  
18 whether you convicted an innocent man.

19 By your oath as jurors, you do not -- you  
20 cannot convict Mr. Castillo when, after careful  
21 consideration of the evidence, there still remains even  
22 one reasonable doubt as to whether he's guilty of these  
23 charges.

24 Reasonable doubt may be that feeling that  
25 the evidence just doesn't convince you. Reasonable

1 doubt can be that feeling that causes you to think, "I  
2 wish Ms. Martinez had shown me more evidence."

3 I have watched you all during this trial as  
4 you listened to the witnesses and as you took notes and  
5 paid close attention. You are reasonable people. And  
6 if you have doubts, then that is reasonable doubt.

7 I submit to you, ladies and gentlemen, that  
8 these charges have not been proven, and I'm going to go  
9 through each of the witnesses and the evidence presented  
10 to you.

11 First of all, the only evidence that you've  
12 heard connecting Mr. Castillo to these crimes comes in  
13 two forms. The first, the audio recordings that were  
14 made by Junior, a confidential informant for the FBI.  
15 The second is the witnesses that came here and  
16 testified, all who have a plea agreement with the  
17 government and are receiving a reduction in their life  
18 sentences in order to come here and testify.

19 I want to address these recordings first.  
20 In these recordings, it's true, both murders are  
21 mentioned. And the government wants to stand up here  
22 and tell you that these recordings are some kind of  
23 confession and reliable evidence.

24 But it is not. Ladies and gentlemen, all I  
25 hear on these tapes is my client restating what everyone

1 else was talking about.

2           The expert who testified in this case, the  
3 first witness, Claudio Saa, told you that bragging is  
4 part of the MS-13 culture, and that fellow gang members  
5 brag to each other about things that they didn't do.

6           It's funny that the government doesn't want  
7 to acknowledge that, when Junior, their informant, has  
8 been doing just that for ten years. As the other  
9 defense counsel told you, he rose up the ranks to become  
10 leader of a well-known MS-13 clique, known as the  
11 Silvas, and he did so by mere bragging and boasting  
12 about things he didn't do.

13           Another point that I want you to take a look  
14 at is the dates of these calls. These recordings with  
15 Junior and my client, they take place months, months  
16 after everyone else was already talking about these  
17 murders and everyone else already knew what had  
18 happened.

19           I want to point to that one specific call  
20 that Ms. Martinez showed you yesterday during her  
21 closing, the one that she says where Mr. Castillo is  
22 talking about how Lagrima begged for his life. Ladies  
23 and gentlemen, that call was dated January 29th, 2014,  
24 which is months after Mr. Lopez Torres had already told  
25 Junior the same thing.



1                   The government might tell you: Well, who  
2                   brags about these things?

3                   Certainly, we would not, but we're not in  
4                   MS-13, where you have to lie to survive.

5                   And here's what they want you to ignore:  
6                   Junior is the leader of the Silvas clique. He has a  
7                   direct line, not only to the leadership of PVLS here in  
8                   Virginia, but he also has a direct line to the  
9                   leadership in El Salvador, ladies and gentlemen.

10                  If my client were to talk to Junior and not  
11                  let him know -- and not tell him that he knew about the  
12                  things that were going on within the clique, then he  
13                  might be the rat. That might give Junior suspicion.  
14                  And we all know what happens to rats. They can die.  
15                  Those are the rules.

16                  Everything that my client talks about -- and  
17                  Junior told you this during cross-examination -- are  
18                  things that Junior already knew. He already knew  
19                  because it was what everybody was talking about. It was  
20                  what everybody was bragging about.

21                  And homeboys lie. That's what the  
22                  government's own witnesses told you. It's one of the  
23                  few things they all agreed on. Homeboys lie. They lie  
24                  to each other and they lie to survive.

25                  The other issue with the government relying

1 on these audio recordings is that they're trying to use  
2 them to prove my client guilty beyond any and all  
3 reasonable doubt. And that means you need to be sure  
4 what's on those recordings.

5               It's undisputed that the quality of these  
6 recordings is poor. They're hard to hear. There's  
7 background noise. There's people talking over each  
8 other. And even in the transcripts provided by the  
9 government, you'll see many instances where it says  
10 "U/I" or "unintelligible," meaning that even the person  
11 listening to them could not decipher what's on those  
12 calls, what's being said.

13              Go beyond the snippets that Ms. Martinez is  
14 presenting to you in trial in those transcripts, and  
15 what you will see is Junior and my client merely  
16 bragging and talking about what's going on within the  
17 clique.

18              I also want to point out that in those  
19 calls, my client never goes into details about what  
20 happened. He uses words like "we" and "they," not  
21 giving specific details. "We took him to the  
22 restaurant."

23              Ladies and gentlemen, he's not giving  
24 details because he doesn't know them, because he wasn't  
25 there.

1 Everything you have before you tells you not  
2 to trust these calls. You have audio recordings where  
3 people are claiming things that just didn't happen.

4 Excuse me.

5 You have people like Pesadilla on the audio  
6 recordings claiming that he cut off Lil Guasón's head.  
7 And he says that in multiple recordings.

8 That's not true. That didn't happen. And  
9 the government isn't alleging that that happened. But  
10 they want you to ignore that part of the call because it  
11 doesn't fit their case.

12 Mr. Lopez Torres says on the call -- on one  
13 of the calls with Junior that Lagrima was dismembered  
14 twice. That didn't happen, either. But again, they  
15 want you to ignore that part of the calls. Don't trust  
16 that part, because that part isn't true.

17 Junior's been bragging and talking about  
18 things he didn't do for over ten years. So these  
19 recordings really don't prove that Mr. Castillo is  
20 guilty of murder beyond any and all reasonable doubt.

21 My client is charged with two counts, and I  
22 want to discuss these separately. He's charged with  
23 Count 4 and Count 6.

24 The first charge is Count 4 in the  
25 indictment, the murder of Nelson Quintanilla Trujillo,

1 who we also have heard referred to as Lagrima. Let's  
2 talk about the government's witnesses that you heard  
3 during this trial in regards to Count 4.

4 Skinny. He's the first witness that  
5 testified about the Lagrima murder. Well, Skinny was  
6 high on marijuana laced with crystal meth that night.  
7 And you have an instruction from Your Honor about the  
8 testimony of witnesses that admit that they were under  
9 the influence of drugs.

10 Now Skinny tells you that he was there. He  
11 was at the Lagrima murder, but he only held down his  
12 arms.

13 The other witnesses that the government  
14 brought do not say that. They say differently.

15 Ms. Martinez also told you yesterday that  
16 Lil Payaso helped Skinny knock down Lagrima. That's  
17 what she said.

18 But that's not what happened. That's not  
19 what Skinny testified to. Skinny said he knocked down  
20 Lagrima, not Mr. Castillo. He didn't say Mr. Castillo  
21 helped him. He said he did it. But Mr. -- but  
22 Ms. Martinez wants to gloss over that.

23 Skinny also says that Lil Payaso, my client,  
24 Mr. Castillo, held down Lagrima's feet. But, the other  
25 government witnesses say no, that it was Skinny who held

1 down Lagrima's feet, not Mr. Castillo.

2 Skinny tells you Lil Payaso stabbed him.

3 Where? Why doesn't he give details? Why  
4 doesn't he tell you where he stabbed him? When? Was he  
5 first? Was it second? How did this murder actually go  
6 down? He doesn't give you any of those details.

7 He also tells you that Mr. Castillo dragged  
8 the body to the grave. Lil Slow doesn't say that.  
9 Duende doesn't say that, either.

10 Ladies and gentlemen, the witnesses are  
11 inconsistent.

12 Skinny tells you that Mr. Castillo wasn't  
13 there during the planning of the Lagrima murder. But  
14 that's different than what Duende says.

15 Skinny tells you that Little -- that Lil  
16 Payaso was at the murder. That's what he testified to  
17 here in court. But remember when we asked him, he had  
18 previously stated, when he first spoke to law  
19 enforcement, that Mr. Castillo wasn't there.

20 It was only after he received the  
21 indictment -- and you heard about this yesterday. It  
22 was only after he received the evidence of what the  
23 government wanted to prove that he added people. That's  
24 when he mentions, "Oh, Lil Payaso was there. He stabbed  
25 him." But that's not what he first said.

1 Skinny also tells you that Lil Payaso was  
2 not at the reburial of Lagrima. In fact, he wasn't  
3 there. He's not charged with that crime. But you'll  
4 see later on that one of the government's witnesses says  
5 he was there.

6 So, Lil Slow testifies next, and I want to  
7 mention that Lil Slow's testimony was inconsistent, not  
8 only with what he had said before to law enforcement,  
9 but it was inconsistent with the other government  
10 witnesses.

11 Mr. Villanueva, Lil Slow, testified that he  
12 was also high on crystal meth. In fact, Mr. Villanueva  
13 told you that he was pretty much high every single day  
14 up until the time he was arrested.

15 He says that Skinny was the one holding  
16 Lagrima's legs, not Mr. Castillo.

17 What else did he say that's different? He  
18 says that, well, it was Mr. Castillo that knocked down  
19 Lagrima, not Skinny.

20 But, that's not all the inconsistencies. He  
21 also testifies that Mr. Castillo stabbed Lagrima.

22 Well, that's pretty much what all the  
23 witnesses say, is that, "Yeah, he was there, and he  
24 stabbed him, we think, but we don't know where. We're  
25 not going to testify where he stabbed him, when he

1 stabbed him," and it's pretty much inconsistent about  
2 the details.

3 When Lil Slow first was interviewed by  
4 police, he told the police that he had no recollection  
5 of any actions by Mr. Castillo. He denied that on the  
6 stand.

7 But Detective Betts, when he testified,  
8 confirmed that, that Lil Slow initially could not  
9 recollect Mr. Castillo's actions during the murder.

10 Ms. Martinez wants you to believe that:  
11 Well, he doesn't have the capacity to lie.

12 Well, he certainly had the capacity from  
13 sometime after he received evidence in this case, in  
14 order to include Mr. Castillo, because when he met with  
15 the government, Ms. Martinez, the agents and Detective  
16 Betts, he had a different recollection.

17 Duende was the following witness that  
18 testified about the Lagrima murder. Ladies and  
19 gentlemen, I submit to you, someone who kills without  
20 remorse cannot tell the truth about anything.

21 Duende's testimony did not match up with any  
22 of the other witnesses. In fact, he pretty much was  
23 just roping people in as he saw them in the courtroom  
24 and just making things up while he was on the stand.

25 He says, Mr. Castillo stabbed Lagrima in the

1 stomach.

2 Take a look at the autopsy report. Nobody  
3 stabbed Lagrima in the stomach.

4 He says that Mr. Castillo helped rebury the  
5 body, that he was at the reburial.

6 Skinny pretty much named everybody at the  
7 reburial except Mr. Castillo. And Lil Slow didn't tell  
8 you that Mr. Castillo was at the reburial, either.

9 He also said that Mr. Castillo was at the  
10 Peligroso -- was part of the plan to murder Peligroso.  
11 Ladies and gentlemen, we didn't hear from any of the  
12 witnesses, Demente, Drowsy, about Mr. Castillo being  
13 involved in the attempted murder of Peligroso. Duende  
14 just made that up.

15 There was another person that we heard  
16 talked about that didn't testify in this trial, and that  
17 was Lil Evil. And you heard the witnesses say that Lil  
18 Evil was present during the Lagrima murder.

19 Well, Lil Evil, when interviewed by law  
20 enforcement -- and Detective Betts testified to this --  
21 at some point law enforcement interviewed him and showed  
22 him a picture of Mr. Castillo. And Lil Evil could not  
23 100 percent identify Mr. Castillo as being at the  
24 Lagrima murder. That was Detective Betts's testimony.

25 Mr. Lopez Torres also testified about the



1 Lagrima murder. And a lot has been said about his  
2 testimony, and you don't have to believe he's telling  
3 the truth if you don't want to. It's enough that his  
4 testimony gives you a reason to doubt the evidence  
5 presented by the government.

6 Remember, the defense doesn't have to prove  
7 anything. And I want to say this about Mr. Lopez  
8 Torres's testimony: At some point the government seemed  
9 to allege that he was testifying so that he could run  
10 the clique inside the Federal Bureau of Prisons.

11 I agree with Mr. Jenkins. That's  
12 ridiculous. If Mr. Lopez Torres wanted to run a clique  
13 within the prison system, he wouldn't have gotten on the  
14 stand and testified. There's plenty of MS-13 members  
15 not sitting in this room.

16 Mr. Lopez took the stand and admitted to  
17 guilt and told you what happened during the Lagrima  
18 murder. He also told you that he's going away for life  
19 for that, and that he has a mother and a family that he  
20 won't ever see again, because he's not getting a plea  
21 agreement. He's not getting a reduction in his  
22 sentence.

23 Another thing that stood out to me about his  
24 testimony that made it believable was the way he  
25 testified during cross-examination about those other

1 incidents that Ms. Martinez asked him about.

2 Remember when Ms. Martinez asked him about  
3 that .22, and he wouldn't name the person, but he said  
4 that a homeboy sent it to him.

5 Ladies and gentlemen, he didn't lie about  
6 it. He didn't want to name the individual. But I  
7 submit to you that if there had been other people at the  
8 Lagrima murder, he would have testified that there were  
9 other homeboys there. He might not have named them, but  
10 he would have told you other homeboys were there. He  
11 didn't do that, because there wasn't.

12 Regardless, the testimony of Mr. Lopez  
13 Torres is just one more reason to doubt this case. It's  
14 not who do you believe. While it's true that not  
15 everybody can be telling the truth, that's not the  
16 proper way of looking at it. The real issue is whether  
17 you believe the government witnesses beyond any and all  
18 reasonable doubt, if you believe their inconsistencies  
19 and the fact that their testimonies cannot agree on any  
20 of the details of this murder.

21 The second charge against my client is  
22 Count 6, the murder of Gerson Martinez Aguilar, which  
23 you also heard referred to as Lil Guasón. And Skinny  
24 was the first -- when Skinny testified, he wasn't at the  
25 murder of Lil Guasón, but he did testify about it.

1           And Skinny's testimony is important, because  
2   in this case, like Mr. Salvato told you, the government  
3   has to prove purpose. And you'll see that in your jury  
4   instructions. The government has to prove why this  
5   murder was committed, because they've charged it as  
6   murder in aid of racketeering.

7           And Skinny gives us some insight as to why  
8   the government hasn't proven purpose beyond a reasonable  
9   doubt. He tells you that it was the money of Belén, his  
10   baby mother, not the gang's money.

11          And he also tells you that he had no issue  
12   with Lil Guasón and Belén, because that had already been  
13   settled. That wasn't his girlfriend any more. He was  
14   with someone else. That issue had already been taken  
15   care of, and him and Lil Guasón, before he went away to  
16   prison, were on good terms.

17          Skinny also testified that during his  
18   incarceration he was incarcerated with Lil Poison,  
19   Douglas Duran Cerritos, and that Lil Poison told Skinny  
20   that Lil Payaso, Mr. Castillo, wasn't there. He didn't  
21   mention him when he told Skinny about the murder of  
22   Gerson Aguilar Martinez. He didn't mention Mr. Castillo  
23   as being there.

24          Lil Slow was the next witness that testified  
25   about the murder of Gerson Aguilar Martinez. And Lil

1 Slow tells you that it was Duende who broke Lil Guasón's  
2 leg with a pickax.

3 Now, that's the opposite of what Duende  
4 says. Duende tells you that it wasn't him. It was  
5 Mr. Castillo.

6 Lil Slow also tells you that it was  
7 Mr. Castillo who cut off Gerson Aguilar Martinez's head.  
8 That's not what Duende said either.

9 And I would suggest that's not a minor  
10 detail, ladies and gentlemen, and the two government  
11 witnesses who came and testified about that murder  
12 cannot agree -- cannot even agree on that point.

13 Lil Slow, under cross-examination, could not  
14 keep his story straight about who stabbed who, when, and  
15 who did what.

16 When Duende testified, he completely  
17 contradicted everything that Lil Slow had said. Duende  
18 says that it was Leopardo and Solitario who cut off his  
19 head; didn't mention Mr. Castillo. He also says that it  
20 wasn't him who broke Duende's (sic) legs with the  
21 pickax, that that was Mr. Castillo.

22 Now, another thing that's interesting about  
23 Duende's testimony is that you can't believe Lil Slow  
24 and Duende. They're contradicting each other. They're  
25 inconsistent with one another, and not on minor details,

1 like Ms. Martinez wants you to believe.

2 But Duende tells you -- and Mr. Salvato  
3 discussed this -- that he showed up to the murder of  
4 Gerson Aguilar Martinez with a dull knife, that he  
5 didn't get a chance to stab him because he had a dull  
6 knife.

7 Ladies and gentlemen, if you believe the  
8 government's theory of the case, that there was a plan  
9 to kill Lil Guasón, a plan where they had several  
10 meetings, then why would Jose Del Cid, Duende, show up  
11 with a dull knife?

12 That goes against their case, so they don't  
13 want you to focus on that. But it doesn't make sense.  
14 It's not consistent with the crime they've charged.

15 Duende testifies about things that no other  
16 witness can confirm.

17 We brought a witness who testified. His  
18 name was Hector Chavarria. Ladies and gentlemen, that  
19 is what we call an unbiased witness, doesn't have a plea  
20 agreement, wasn't getting anything for his testimony.  
21 You didn't hear that he was being paid. You didn't hear  
22 that he had some kind of deal.

23 What did he tell you about that night? He  
24 told you that he saw members of PVLS, of MS-13's PVLS  
25 clique, the night that Gerson was killed, at Holmes Run

1 Park. He was there on two separate occasions.

2 And, Mr. Salvato asked him. He was there  
3 because he drove people to the park that night. He saw  
4 somebody with blood. But he told you without a doubt  
5 that he did not see Omar Castillo that night.

6 Ladies and gentlemen, that is reasonable  
7 doubt. Lil Payaso, Mr. Castillo, he wasn't there that  
8 night. All of the inconsistencies by the government's  
9 witnesses raise reasonable doubt as to their testimony.

10 But again, Ms. Martinez told you yesterday,  
11 ignore the inconsistencies in this case, ladies and  
12 gentlemen, because the core details are the same.

13 Ladies and gentlemen, the fact that a  
14 witness says this person was there, is not enough to  
15 convict someone beyond a reasonable doubt. These  
16 inconsistencies cannot be overlooked, if you are to  
17 prove this case beyond a reasonable doubt.

18 The truth, ladies and gentlemen, does not  
19 have different versions. Who cut the head off is a core  
20 detail. The fact that all the witnesses couldn't even  
21 agree on that shows that they could not prove this case  
22 beyond a reasonable doubt.

23 The evidence you heard that connects  
24 Mr. Castillo to these crimes is based on the testimony  
25 of other individuals. Some of them had made previous

1 inconsistent statements. Some of them had previously  
2 said they couldn't remember his actions. They gave  
3 inconsistent stories about the murder.

4 And the government wants you to avoid all  
5 these details, why? Because the details don't match,  
6 because he wasn't there and he didn't commit these  
7 murders.

8 Yesterday, Ms. Martinez gave you an excuse  
9 about that, and that's what it was. It was an excuse.  
10 She said: These guys aren't choirboys. Gang members  
11 don't kill unless it's in front of other gang members.

12 Ladies and gentlemen, we sat here and we  
13 heard the instructions that the judge gave you. There  
14 was no gang member exception. There was nothing that  
15 said that you treat a witness differently because, well,  
16 he's a gang member, he's a liar, so we don't have to  
17 hold him to the same standard. That's not our system.  
18 That's not the law.

19 Reasonable doubt can arise both from the  
20 evidence and also the lack of evidence, and I want to go  
21 through the lack of evidence in this case.

22 There is no DNA or forensic evidence in this  
23 case that you heard connecting Mr. Castillo to the  
24 murders of either Lagrima or Lil Guasón.

25 What's the reason we want DNA and forensic

1 evidence? Is because it speaks for itself. It's not  
2 biased. It's not prejudice. It has no ulterior motive.  
3 It's not corrupt. It's pure. And the lack of forensic  
4 evidence in this case raises reasonable doubt. You  
5 can't disregard that.

6 No one said that Mr. Castillo sold drugs.  
7 That wasn't mentioned in the notebooks. There's a lot  
8 in the notebooks that Ms. Martinez wants you to  
9 overlook. Mr. Castillo is not mentioned as a drug  
10 dealer, as a drug user, during this case.

11 But there's something else in those  
12 notebooks, when you look through them in the jury room.  
13 A lot of people owed money to the gang. It's part of  
14 the business that the gang had. You'll see that some  
15 gang members owed \$500, \$400.

16 So when the government tells you that that  
17 was the reason that Lil Guasón got killed, take a look  
18 at the evidence that you have. It's not a reason for  
19 murder, because a lot of the PVLS cliques were selling  
20 drugs and owed money, took money, borrowed money.  
21 You'll see that in the notebooks.

22 There was no evidence that Mr. Castillo kept  
23 any weapons or had any weapons. They didn't find any --  
24 There were no weapons because they didn't find any  
25 weapons on him.



1           There's also no evidence that he fled  
2 anywhere. Ms. Martinez talked about going to Kansas  
3 City shows that these people -- you never heard anything  
4 about Mr. Castillo going anywhere. He didn't flee to  
5 Kansas City. He didn't flee anywhere.

6           You didn't hear any evidence about him  
7 worshiping the devil. You didn't hear him being  
8 involved in other gang-related crimes, did you?

9           That shooting that Ms. Martinez talked  
10 about, where there was a bunch of people, he wasn't  
11 there. You didn't hear that.

12           She showed you pictures of MS-13 members at  
13 a party, just having a good time. She wants to say that  
14 means something. Well, guess what? He wasn't there,  
15 either.

16           Junior shows pictures that are taken outside  
17 of hotel rooms where Junior says general meetings took  
18 place.

19           Did Junior testify about what went on in  
20 those meetings? No.

21           Did he even tell you that Omar went inside  
22 those meetings? No.

23           You didn't see any cellphone records  
24 belonging to Mr. Castillo. They had an FBI expert that  
25 came in and talked about satellite triangulation and the

1 CAS system, how they can drive around and find out if  
2 your cellphone was in an area.

3 How come they didn't do that for  
4 Mr. Castillo, to prove he was in the park that night?

5 Later on today, Ms. Martinez will have  
6 another chance to speak with you. I won't have that  
7 other opportunity. But think, when she's talking to  
8 you, think about the inconsistencies in the witnesses'  
9 testimony. Think about the parts of the recordings that  
10 she has with Junior and other people in this room that  
11 are inconsistent with her story.

12 What do you do with that evidence?

13 At the end, you'll be asked to return one of  
14 two verdicts. There's only two verdicts in our legal  
15 system; that's guilty and not guilty. And our system  
16 puts the burden of proof on the prosecution to prove  
17 that someone is guilty beyond any and all reasonable  
18 doubt. And if they can't do that, then that means  
19 they're not guilty. And by your oath, that mandates you  
20 to return a verdict of not guilty.

21 What that means is that in our legal system,  
22 not guilty means a lot of different things. It means,  
23 I'm not a hundred percent sure about this evidence. It  
24 means, maybe they did it, maybe they didn't, but I'm not  
25 convinced beyond a reasonable doubt. All of those

1 states of mind are not guilty.

2 Ladies and gentlemen, vote reasonable doubt.  
3 I'm not here to beg you for a verdict, and I'm not here  
4 to plead. I'm simply going to ask that you respectfully  
5 do your duty and vote the reasonable doubt that you know  
6 exists in this case.

7 No one will second-guess you or challenge  
8 you. If you return a verdict of what justice demands,  
9 "We had reasonable doubt," that verdict, ladies and  
10 gentlemen, is not guilty. Mr. Castillo is not guilty on  
11 Count 4 and Count 6.

12 Thank you for your attention.

13 THE COURT: Ladies and gentlemen, the next  
14 argument would be approximately 50 minutes to an hour.  
15 I think that the prudent thing to do is break now for  
16 lunch. And I normally break at 1:00, but I would like  
17 to break now.

18 And I remind you not to discuss the case,  
19 nor permit the case to be discussed in your presence.  
20 Don't do any research on the case. And leave your notes  
21 in the jury deliberation room.

22 We will resume -- it looks like it's  
23 12:30 -- 1:30. Come back at 1:30. Thank you.

24 (Court recessed at 12:28 p.m. and reconvened  
25 at 1:34 p.m.)

1 THE COURT: Ready to bring the jury out?

2 Okay.

3 Mr. Toliver you can bring our jury out.

4 Thank you.

5 (Jury present.)

6 THE COURT: You may be seated.

7 All right, Counsel, you may proceed.

8 CLOSING ARGUMENT BY DEFENDANT CHAVEZ

9 MR. AQUINO: Good afternoon. Let's get  
10 right to it.

11 The government alleges in Counts 7, 8 and 9  
12 that our client, Jesus Chavez, was the shooter who  
13 killed Julio Urrutia on June 19th of 2014.

14 In fact, the government is not confident in  
15 who killed Mr. Urrutia. They are mistaken in trying to  
16 lay the blame at Jesus Chavez's feet. They are wrong.  
17 And the government's good judgment has become impaired  
18 and damaged in the process.

19 Now, the government case. The government  
20 claims that Jesus shot and killed Julio Urrutia, and  
21 that conclusion revolves around several factors. First,  
22 the testimony of Jose Del Cid, Duende, and Sen Genaro  
23 Garcia, Gatuso, both of whom testified that Jesus was  
24 the shooter.

25 Now, as a general rule, we know an awful lot

1 about MS-13, about gang members who lie. And a lot of  
2 lawyers already addressed that issue. But I would like  
3 to add just one additional thing.

4 We know that these guys are really crafty  
5 and skilled liars. And it stands to reason. For  
6 example, the more you hit a baseball, the more you hit a  
7 tennis ball, the more you hit a golf ball, you become  
8 better at it. And these guys have been lying their  
9 entire lives. As Mr. Torres says, they are taught to  
10 lie.

11 Now let's get to the specifics, Jose Del  
12 Cid. Detective Ignacio admits that Del Cid said that  
13 Gatuso was the shooter, and that Gatuso took the weapon  
14 following the shooting.

15 To be clear, if you accept that as a true  
16 statement, that's the end of the case. Because clearly,  
17 the government's theory is, is that Jesus was the  
18 shooter.

19 So you have a choice. Do you believe that  
20 statement that Del Cid made to Detective Ignacio or not?  
21 If the answer to that question is yes, then that's it.  
22 If the answer to that question is no, then we know that  
23 he lied about a material aspect of this case. And let's  
24 face it, you can't get more material than who the  
25 shooter was, right?

1                   Now, what else do we know about Del Cid? We  
2 know that Del Cid has given false names to the police  
3 prior to the shooting.

4                   Why do you do that? You do that to trick  
5 people, namely the police, in an effort to conceal your  
6 identity. So we know that about Del Cid.

7                   Now, I don't know who the shooter was. I  
8 wasn't there. You weren't there. And the government  
9 lawyers were not there, to be clear.

10                  But what we do know is that Del Cid is a  
11 likely candidate for that. What do we know about Del  
12 Cid?

13                  I mean, that is truly, truly evil guy that  
14 took that witness stand, I mean, evil in the flesh,  
15 right in front of you.

16                  We know that he attempted to shoot and kill  
17 his own mother. We know that he had his hand in several  
18 other murders.

19                  And what else do we know about him? We know  
20 that he had tattoos on both of his arms.

21                  Now, to be fair to the evidence, we heard  
22 from Vidal Jimenez and we heard from Detective Buckley.  
23 And what did Detective Buckley say about Vidal Jimenez?  
24 He said that within two hours of the shooting, within  
25 two hours of the shooting, that Vidal Jimenez said that

1 the shooter had tattoos on both of his forearms, both of  
2 his forearms. And we know that Del Cid has tattoos on  
3 both of his arms, truly not a perfect fit, not his  
4 forearm, necessarily, but both of his arms.

5 In addition, what else do we know that Vidal  
6 Jimenez stated to Detective Buckley within two hours of  
7 the shooting? Within two hours of the shooting, he said  
8 that the shooter was 5 foot 8 to 5 foot 9 and  
9 165 pounds.

10 Now, to be clear, in this courtroom Vidal  
11 Jimenez says that the shooter was 5 foot 11 and  
12 180 pounds.

13 The point I'm making is, is that the  
14 description given within two hours of the shooting as to  
15 height and weight more closely resembles Del Cid than it  
16 does Jesus Chavez.

17 In addition, we know through Mr. Torres,  
18 that is Greñas, that he had discussions with Duende at  
19 the Alexandria Jail about the case and the evidence in  
20 the case. And it's clear that the inmates shared  
21 information through a series of notes. Torres states  
22 that those notes went between him and Duende, and it  
23 also suggests that Duende was communicating with other  
24 people at the jail.

25 I submit that he was communicating likewise

1 with Gatuso. We know that both were at the jail,  
2 according to Duende, for an extended period of time. We  
3 know that Duende says that he saw Gatuso at the jail.

4 I submit that in light of those notes that  
5 we heard Torres talk about, that Gatuso and Duende had  
6 an opportunity and a motive to align their stories. And  
7 we know that Duende admits, by the way, that on at least  
8 one occasion he communicated with Gatuso.

9 Now, the government has spent a lot of time  
10 talking about the transcripts in this case, transcripts,  
11 transcripts, and they've highlighted two, two in  
12 particular, as to my client, Jesus Chavez. They cited a  
13 June 27th, 2014, telephone call and a June 29th, 2014,  
14 telephone call.

15 Let's work backwards. The June 29th  
16 telephone call is between Talibán and it includes Junior  
17 and others.

18 Now, the threshold issue is, on that call,  
19 the government contends that Talibán is Jesus Chavez.  
20 The threshold issue on that is, is it? Is Talibán Jesus  
21 Chavez?

22 Now, we know two things about that call. We  
23 know that Junior, he doesn't know who Talibán is. He  
24 admitted in cross-examination he never meet the guy  
25 before. He had never spoken to the guy before. So



1 Junior is not in position to authenticate that call. He  
2 doesn't know the guy.

3 And, so who is the government relying upon  
4 to make the connection that Talibán is Jesus Chavez?  
5 Jose Del Cid, the killer, liar.

6 Now, what else do we know about that call?  
7 There was a lot of testimony in this case about  
8 bragging, and that's how you advance your role in the  
9 gang. If you kill somebody, for example, you tell  
10 people about it and you brag about it and you talk about  
11 it.

12 Would be a rough equivalency, a football  
13 game in the NFL, a running back scores a touchdown,  
14 spikes the footballs, makes a big deal, and everybody  
15 attracts attention to him.

16 Well, that's what these MS-13 guys do,  
17 except murder is their goal, and they want to attract  
18 attention to themselves when they kill someone.

19 Now what's interesting and what's applicable  
20 in the case about that telephone call, the June 29th  
21 telephone call, is that Junior indicates that Talibán  
22 never talks about killing Mr. Urrutia, nor does Talibán  
23 ever indicate that he was with Gatuso or Del Cid at the  
24 time of the shooting.

25 Again, I want to underline this one point:

1 Mr. Torres emphasized in his testimony that Duende  
2 bragged about the killing of Mr. Gerson. There was no  
3 discussion in that telephone call about killing  
4 Mr. Urrutia or being with Duende and Gatuso.

5 We simply say that the government  
6 mischaracterizes that telephone call.

7 Now, let's get to the next telephone call,  
8 June 27, 2014, involving Del Cid, Duende and Junior.

9 And the government says: Ha-ha, look, Del  
10 Cid is talking about the murder and what happened in the  
11 Urrutia murder.

12 Not so fast. The gist of that telephone  
13 call was Duende making Del Cid aware: Man, you've got a  
14 problem and you got a big problem, and here's why. That  
15 was an unauthorized killing without notice to the gang  
16 prior to the shooting.

17 In addition, Junior makes it crystal clear  
18 that that was an MS-13 member that got killed, and  
19 El Salvador is not happy and you've got some real  
20 explaining to do, Del Cid, about that killing.

21 And, in addition, Junior indicates that the  
22 shooting occurred in Chirilagua. But, Duende's area to  
23 patrol was Culmore. And that was confirmed by Del Cid  
24 in his testimony.

25 The shooting occurred, of Mr. Urrutia, in

1 Pinos' territory. And the bottom line is, is that that  
2 was not Duende's area to patrol. So, in those three  
3 respects, Duende had some real concerns.

4 Now, we know through Junior and we know  
5 through Sergeant Saa that a problem shooting like this  
6 one could result in a green light.

7 And, every -- Del Cid had every single  
8 motive to shift the blame. He did not want to be  
9 subject to a green light for an unauthorized killing of  
10 an MS-13 member.

11 And it's crystal clear from Sergeant Saa  
12 that the gang does not want police attention unless it's  
13 absolutely necessary. It was easy to shift the blame  
14 onto Talibán. Why? According to Junior, he came  
15 recommended by the gang from Blackie, who was in jail.  
16 The gang thought Blackie was a rat.

17 According to Junior, Talibán was not a gang  
18 member. He was not a chequeo or a *paro*. In other  
19 words, Talibán was an easy guy for Del Cid to dump on in  
20 this case, to avoid himself being the subject of a green  
21 light for an unauthorized killing of an MS-13 member.

22 Now, you heard testimony from Sen Genaro  
23 Garcia -- again, that's Gatuso -- numerous stories he  
24 gave to the police, again, consistent with all the other  
25 MS-13 members that we heard from, a liar.

1                   For example, he told Detective Ignacio, "I  
2     don't remember much because I was under the influence of  
3     drugs."

4                   He told Detective Ignacio, "I really  
5     couldn't tell you who shot Julio Urrutia."

6                   And keep in mind, the government tried to  
7     pretty him up by saying, "Well, he met with his pastor  
8     prior to the time he turned himself in," as a way of  
9     saying he turned over a new leaf. But these statements  
10    that he made to Ignacio were after he met the pastor and  
11    after he turned himself in. In other words, he  
12    continued to lie.

13                  In addition, the government lawyer said  
14    yesterday that Gatuso heard the sound of a bullet being  
15    placed in the chamber of a gun.

16                  We dispute that. We dispute that.

17                  He testified to that, but on  
18    cross-examination Ms. Amato cross-examined him about his  
19    specific location when he claims to have heard this.  
20    And what he claims to have heard is, and saw, was that  
21    supposedly Talibán went upstairs to an apartment to get  
22    the gun, supposedly, and he claims that according -- in  
23    his cross-examination, that he went inside an adjoining  
24    building and shut the door.

25                  In other words, it was impossible for him to

1 hear what he claims to have heard about the bullet being  
2 chambered in a gun.

3 In addition, what else do we know? We know  
4 according to Junior that Gatuso was doing everything he  
5 possibly could to get that gun back. He was desperate  
6 to get that gun back.

7 And keep in mind, Del Cid again initially  
8 identified Gatuso as the shooter and the guy that  
9 removed the gun from the scene.

10 Now, Gatuso was so desperate to find that  
11 gun that he was willing to have Junior commit a crime  
12 and kill somebody, and Gatuso himself was willing to  
13 kill somebody to get that back -- gun back and shut  
14 somebody up.

15 Now, why would he be so desperate?

16 Again, like Del Cid, Gatuso in some respects  
17 likewise fits the physical description of the shooter.  
18 We know he has tattoos on his right hand. We know that  
19 he likewise fits the size and weight of the shooter,  
20 five eight to five nine, 165 pounds, according to Vidal  
21 Jimenez within two hours of the shooting.

22 What else do we know about Gatuso?

23 We know that given two opportunities in this  
24 courtroom, right in front of you, he was not able to  
25 identify our client, Jesus Chavez. And he was only able

1 to identify Jesus Chavez when the government showed him  
2 a picture up on the screen and basically led him into  
3 identifying Jesus.

4 Now, you also heard, in regard to the  
5 government's case, testimony from Detective Ignacio, and  
6 he interviewed three, three relevant witnesses: Duende,  
7 Gatuso and Vidal Jimenez.

8 Detective Ignacio admits to a lying to  
9 arrestees, admits to being a cop who committed a crime  
10 of moral turpitude, that is, involving lying, cheating  
11 or stealing -- and I emphasize, while he was a police  
12 officer.

13 He admits that he tried to detect -- excuse  
14 me -- that he tried to direct Gatuso, in a photo spread  
15 of my client, as to who to pick. Ignacio admitted that.  
16 He was trying to direct him who to pick.

17 What also do we know? That Ignacio was  
18 present when Vidal Jimenez made his July 7th, 2014,  
19 selection from the photo spread. In other words, you  
20 see my point: Ignacio was involved in an attempt to  
21 steer the photo spread identification of Gatuso, and I  
22 submit that he was likewise involved in Vidal Jimenez's  
23 selection on July 14th.

24 Moreover, he had an opportunity to  
25 coordinate the stories of the three relevant witnesses.

1 And again, we know these witnesses met at the Alexandria  
2 Jail, between Duende and Gatuso.

3 Devil worship. You've heard a lot of  
4 testimony in this case about devil worship. The  
5 government wants to portray these guys, Gatuso and  
6 Duende, as truth-tellers.

7 We disagree. The fact is, they would throw  
8 grandma and grandpa over the side of the boat if they  
9 could to save themselves. And what they want in this  
10 case is to get out of jail.

11 The government can make that happen, and  
12 they're going to make that happen, for a price. And  
13 that price is their testimony. I submit that the  
14 government is really engaged in a true pact with the  
15 devil in this case.

16 And I mean that in every sense of the word,  
17 because they are essentially allowing two really evil  
18 guys to get out of jail and back into our community. It  
19 may not be tomorrow, may not be next year, may not be  
20 five years from now, but it's happening.

21 And consistent with that, what do we know  
22 about the government's behavior in this case?

23 We know that Del Cid admitted that the  
24 U.S. Attorney's Office went to the Commonwealth  
25 Attorney's Office in Prince William County, in an

1 effort -- and that was on Del Cid's behalf -- and they  
2 agreed not to prosecute Del Cid for his behavior in a  
3 crime occurring in the fall of 2013.

4 What else do we know?

5 We know that the U.S. Attorney's Office went  
6 to the Commonwealth Attorney's Office in Fairfax County,  
7 so that Duende would not be prosecuted for his role in  
8 the stabbing of a juvenile in Fairfax County.

9 What else do we know?

10 On his behalf, the U.S. Attorney's Office  
11 went to the Commonwealth Attorney's Office in the City  
12 of Alexandria, so that Duende would not be prosecuted  
13 for his role in another assault-stabbing of someone in  
14 the City of Alexandria.

15 Effectively, the United States Attorney's  
16 Office has become Duende's personal lawyer in  
17 negotiating these deals on his behalf.

18 And why are these -- they negotiating these  
19 deals?

20 They're greasing the skids, ultimately, so  
21 that Duende can get back out of jail. There's just no  
22 doubt about that.

23 Now, you can see how -- what I'm trying to  
24 say about how the government's judgment has become  
25 impaired in the process of this case. They're so



1 determined to fit a square peg into a round hole,  
2 insofar as Jesus is concerned, they're willing to engage  
3 in this type of behavior of becoming his, Duende's,  
4 lawyer.

5 Now, also something else that caught my  
6 attention that disturbed me. Did you notice a quiet  
7 attempt on behalf of government to blame Judge Lee?

8 I thought that was kind of interesting.  
9 They asked Gatuso and Duende: It's the judge is the one  
10 that's going to be sentencing you, isn't it?

11 As if to say: You're blood is not on our  
12 hands. Your blood's -- the mud is not going to get on  
13 us, the government lawyers.

14 But what became evident, crystal clear, in  
15 cross-examination is, Judge Lee has no power to affect  
16 their sentence unless the government moves for the  
17 reduction.

18 Effectively, the government is going to be  
19 the ones that are allowing these people back into our  
20 community. And I thought it was wrong that they tried  
21 to hide behind Judge Lee's robes rather than just accept  
22 responsibility for their behavior. Again, I submit to  
23 you their judgment has become impaired in the process of  
24 this case.

25 Vidal Jimenez. Let me ask you: The

1 government called him. Is he a government witness, or  
2 is he a defense witness?

3 I think he's a defense witness in this case.  
4 Let's go over his testimony.

5 We know that Vidal Jimenez was with a rival  
6 gang, called the Latin Homies, for three years.  
7 According to Sergeant Saa, that gang engaged in thefts,  
8 drug distribution, and assaults.

9 I submit that he had a motive to assign  
10 blame to what he perceived to be an MS-13 member. And  
11 it's not all that surprising that he picked Jesus out of  
12 that photo spread in July -- on July 7th of 2014.  
13 According to Detective Buckley, they presented six  
14 similarly looking individuals.

15 And we also know that Victor Ignacio,  
16 Detective Ignacio, was present during that selection  
17 process, just as he was present during the Gatuso  
18 process when he tried to steer the identification of  
19 Jesus Chavez.

20 But more importantly, again, to be clear,  
21 what do we know?

22 Within two hours of the shooting, he gives  
23 two specific facts, Vidal Jimenez, to Detective Buckley  
24 says the height and weight, five eight to five nine,  
25 165 pounds. Again, to be clear, that was different from

1 what he testified up on that witness stand, in which he  
2 said that the shooter was 5 foot 11, 180 pounds. But he  
3 also gave a description of the tattoos, the tattoos on  
4 both forearms of the shooter.

5 Now, what do we know about Vidal Jimenez?

6 There's a guy that knows tattoos. He's a  
7 former gang member, according to him. He says: I knew  
8 tattoos from seeing it on people in gangs. I knew  
9 tattoos from people in middle school that I went to  
10 middle school with. My friends have tattoos. I knew  
11 tattoos because I went to high school with people that  
12 had tattoos on them.

13 In fact, he -- Vidal mentioned he, himself,  
14 had tattoos.

15 And I asked him specifically: You've seen  
16 hundreds of tattoos in your lifetime.

17 Yep. Yes, I have.

18 And, also, he testified that he had a clear  
19 vision of the shooting. He was right there. And he  
20 gave that description within two hours of the shooting;  
21 two hours.

22 According to Detective Betts, my client  
23 doesn't have tattoos on his forearms; no way.

24 Show them your arms.

25 (Defendant Chavez complies.)

1 MR. AQUINO: That's good.

2 You know if the government could put tattoos  
3 on his arms, they would. But they can't. He doesn't  
4 have tattoos on his arms.

5 What else do we know about Vidal Jimenez?

6 Did you notice how he tried to kind of, sort  
7 of lie about that incident that occurred in the early  
8 morning hours of June 19th?

9 By the way, that was the day of the  
10 shooting, right? June 19th.

11 At around 12:15 a.m. -- I said, "Isn't it  
12 true, you were convicted" -- or you were arrested" --  
13 and ultimately he pled guilty to -- "marijuana  
14 possession?"

15 What did he say? "No."

16 And it was only when I showed him the actual  
17 evidence of the conviction he said, "Oh, okay. Yes."

18 Now, the government also cites cellphone  
19 evidence and they say, "Well, Jesus's phone was in the  
20 area where the shooting occurred, the rough area."

21 Well, that's not all that surprising. His  
22 sister lived in the Chirilagua area.

23 From these facts, the government asks that  
24 you find Jesus guilty of being the shooter, the man who  
25 killed Julio Urrutia. We disagree.

1           Now, sometimes what you don't hear in  
2 evidence is just as important as what you do hear. For  
3 example, we know the government has no gun, no bullet,  
4 no shell casing. Detective Ignacio said they did not  
5 recover a bullet or shell casing from the scene.

6           What did they do to look?

7           Did they look for five seconds?

8           Did they look for five minutes?

9           Did they look for five hours?

10          Who knows?

11          In addition, according to the government --  
12 according to Duende, the gun was received from Oscar,  
13 Slick, Mickey Mouse -- that's all the same person, by  
14 the way, Oscar, Slick, Mickey Mouse, according to  
15 Duende. The gun was received from Duende -- excuse me,  
16 I'm sorry -- returned -- received from Oscar and  
17 returned to Oscar.

18          Where is it?

19          Have you heard from Oscar? No.

20          You heard evidence that Sonia Chavez, my  
21 client's sister, shared an apartment for a period of  
22 time with Duende. We know from Detective Betts they  
23 conducted searches in this whole case.

24          Did they conduct a search of Sonia Chavez's  
25 apartment to determine if there was any evidence that

1 might be relevant to this investigation?

2 No. We haven't heard of any.

3 Duende said he spent the week prior to his  
4 arrest on July 2nd in my client's mother's home.

5 Have we heard any evidence that the police  
6 might have wanted to investigate, through a search of  
7 his mother's home? Have you heard anything about that?

8 No.

9 You heard evidence from Duende that  
10 following the shooting, that my client and Duende went  
11 to Blanco Reyes's apartment and spent time there.

12 Have you heard from Blanco?

13 No.

14 Counsel said yesterday that my client  
15 ordered Sixto Solano to leave the area immediately prior  
16 to the shooting.

17 Have you heard from Sixto Solano?

18 No.

19 In addition, we know from Detective Ignacio  
20 that my client's cellphone was seized. Did the  
21 government offer any messages in regard to the cellphone  
22 as to text messages or -- or e-mails?

23 Wouldn't they want to know, between  
24 June 19th and July 2nd, what was going on relative to  
25 text messages and e-mails?

1 Have they offered you any information about  
2 what was said?

3 No.

4 Now, I've cited instances to you about  
5 witnesses you would expect to hear from or information  
6 you would expect to see.

7 So let me pose this question to you: Whose  
8 case is it?

9 It's not my case. It's not my colleague,  
10 Ms. Amato's case. It's not Judge Lee's case. This is  
11 one of maybe 15 cases that he'll try in 2016. And it's  
12 not your case.

13 Well, whose case is it?

14 I'm looking right at them. This is their  
15 case. They're why all of us is here. And they're  
16 accusing Jesus Chavez of as serious a crime as you could  
17 possibly accuse anybody of, murder.

18 Now, if that's the case -- and I promise you  
19 it is their case, they're the moving party in this  
20 case -- shouldn't they just not put forward evidence,  
21 but evidence of such a character as to allow you to make  
22 an informed and educated decision about a man's very  
23 future?

24 I submit that's not too much to ask.

25 I submit that their behavior even goes

1 further to underline that point. Just -- their  
2 investigation appears that they're not all that  
3 interested in this case, despite what they contend.

4 For example, if you judge people by their  
5 deeds and not their words, what is evident from their  
6 failure to call witnesses, or their lack of using  
7 investigative techniques in this case, is that they  
8 don't seem all that interested in this case or all that  
9 interested in doing justice as they profess to be.

10 Now, the defense's evidence and testimony.

11 You heard a lot about tattoos. I'm not  
12 going to spend any more time on that. It's crystal  
13 clear, that issue.

14 But you also had additional evidence,  
15 because we're not done with that tattoos -- we're not  
16 stopping there.

17 Remember the guy named Cosmo Gonzalez,  
18 through the video? And we had -- we weren't able to get  
19 the sound right in the first attempt, but ultimately we  
20 did. He had absolutely no stake in this case, zero.  
21 And he came and told you what he saw and what he heard.

22 Let's go over what Cosmo Gonzalez said and  
23 testified to. He got home around 11:20 the night of the  
24 shooting, 11:20 p.m. He sees a shirtless man confront  
25 Mr. Urrutia, the decedent. An argument ensues over a



1 drug deal.

2 Now, we know from Officer Garcia who that  
3 shirtless man was, right? The shirtless man was  
4 David Jimenez.

5 Cosmo enters his apartment. Within seconds  
6 he hears a shot, comes back out.

7 And what does he see?

8 David Jimenez, the shirtless man, standing  
9 over the decedent, Mr. Urrutia, who was on the ground.  
10 David runs into the woods, appears to leave something in  
11 the woods, and returns.

12 What's even more interesting about that,  
13 who's David's brother? Vidal Jimenez.

14 And as I mentioned earlier to you, we know  
15 that in the early morning hours of June 19th, he was in  
16 possession of marijuana. First he tried to deny it, but  
17 then he admitted it.

18 And I submit to you the Jimenez family was  
19 running a marijuana business in the Chirilagua area, to  
20 service the poor people there, and they were unhappy  
21 with Mr. Urrutia, the decedent.

22 Now, this is a completely, completely  
23 different set of facts relative to the shooting and how  
24 it occurred. For example, you've heard testimony over  
25 here from Vidal Jimenez, Duende, and Gatuso, and you've

1 got testimony over here from Cosmo Gonzalez.

2           You can't reconcile those two scenarios. In  
3 other words, to say it a different way, sometimes you  
4 could kind of round testimony. Somebody says a shirt  
5 was black; another person says the shirt was white.  
6 Okay, the shirt becomes blackish or whitish. You can  
7 round that testimony. You can't reconcile those two  
8 stories.

9           So, let's do this: Let's examine how the  
10 government makes their sausage, how they procure  
11 testimony and compare it to Cosmo Gonzalez and his  
12 testimony.

13           What do we know?

14           We know in this case -- you've heard  
15 testimony how the government pays people. \$40,000 was a  
16 figure that's been thrown around.

17           I haven't paid anybody.

18           What else do we know?

19           They give out immigration benefits like  
20 candy.

21           Do I have the power to give out immigration  
22 benefits?

23           No.

24           And let me stop right there, because this  
25 really bothered me, that I want to -- yesterday, the

1 government lawyers tried to anoint Junior as a hero.  
2 That guy is no hero, no way, no how. He was looking for  
3 something from the government.

4 A hero is someone who is selfless, who acts  
5 in the interest of other people. That guy is no hero.  
6 He is not selfless. He was looking for help from the  
7 government, for immigration benefits and money. And  
8 that's exactly what he got.

9 But also, what do we know that the  
10 government gives out?

11 They give out people their freedom. They  
12 get out of jail.

13 Can I do that?

14 No.

15 So, I ask that you compare and contrast how  
16 the government makes their sausage and compare it to  
17 Cosmo Gonzalez's testimony. He is going to get  
18 something from me. You know what he's going to get? A  
19 firm handshake, if I ever see him again; a firm  
20 handshake.

21 I've been practicing law since I was 24.  
22 I'll turn 59 this summer. And I learned a long time  
23 ago, sometimes that's it. That's all you got. And  
24 that's what Cosmo is going to get from me, a firm  
25 handshake.

1                   Now, the judge mentioned to each of you,  
2 when you were selected for the jury, how would you  
3 evaluate a person's testimony?

4                   And there's a jury instruction on the  
5 credibility of witnesses that he gave you already. I  
6 ask that you consider that when you're weighing the  
7 testimony of these people -- Del Cid, Gatuso, Vidal  
8 Jimenez. Compare it to the testimony of Mr. Cosmo. Big  
9 difference, big, big difference.

10                  Now, there hasn't been much talk in this  
11 courtroom about the decedent, Mr. Urrutia. There are  
12 certain things all of us agree on, all of us. That guy  
13 does not deserve -- he did not deserve to die. He was a  
14 young guy with a family. And the shooter of Mr. Urrutia  
15 should be held accountable for his behavior. Everyone  
16 agrees with that.

17                  But there's a second part. There's a second  
18 part that sometimes gets lost in the equation when the  
19 government gets aggressive -- and they have been  
20 aggressive in this case -- and that is, we want the  
21 right person to be held accountable, not the wrong  
22 person. Because that would compound the tragedy of this  
23 guy's death, Mr. Urrutia.

24                  Now to illustrate the point of aggressive  
25 government behavior, I highlight to you and remind you

1 their attempt to blame Judge Lee, the behavior of  
2 Detective Ignacio in trying to steer the selection  
3 process during the photo spread, and the behavior of the  
4 government lawyer in the same -- with the same witness,  
5 Gatuso, when he was on the witness stand, that caused  
6 Judge Lee to reprimand the government lawyer for her  
7 behavior in the identification process.

8 Do you see again what I mean?

9 It illustrates my point that the  
10 government's good judgment has been damaged in this  
11 case. They're so determined to fit the square peg in a  
12 round hole that they have acted in an aggressive,  
13 aggressive fashion.

14 Burden of proof. There's been a lot of  
15 hoo-ha that you've heard from all the lawyers. I'm not  
16 going to rehash burden of proof, except for this reason:  
17 The government's burden is to prove their case to you by  
18 proof beyond a reasonable doubt.

19 Now, remember when you heard from the  
20 linguists up there? They talked about context. Got --  
21 context. So, let's give context on the issue of burden  
22 of proof and reasonable doubt.

23 Let's pretend on your way home today, you  
24 turned your ankle on a curb and you said, "I'm going to  
25 sue the City of Alexandria for the damage I suffered."

1           No problem. You come into a courthouse just  
2 like this, in front of a judge just like Judge Lee, and  
3 to prove and prevail your case, you have to prove your  
4 case by a preponderance of the evidence.  
5 "Preponderance" means is it more probably than not that  
6 the city was negligent in some manner in failing to  
7 maintain the curbing or the sidewalk that you tripped  
8 on?

9           To give it a math formula, at least -- at  
10 least 51 percent of the evidence would have to be in  
11 your favor. Again, the standard of proof in a personal  
12 injury case, by a preponderance of the evidence.

13           Now, let's change the facts of the case.  
14 Microsoft sues Apple Computer, alleges actual fraud,  
15 actual fraud. No problem. To prevail in the case like  
16 that, they have to come into a courthouse just like  
17 this, in front of a judge just like Judge Lee, and prove  
18 their case to you by a higher standard than the  
19 preponderance, that is, by clear and convincing  
20 evidence, a higher standard.

21           But in a criminal case, the government must  
22 prove their case to you by the highest legal standard,  
23 by proof beyond a reasonable doubt.

24           So, that begs the question: Why do we do  
25 this? Why do we hold the government accountable to this

1 highest legal standard and this heavy, heavy burden that  
2 they have?

3 In the DNA of every American are two real  
4 strains, one, a profound and deep respect for individual  
5 liberty, like nowhere else, really. We want people to  
6 be able to say what they want to say, associate with who  
7 they want to associate, worship who they want to  
8 worship. And that's fine. That is definitely part of  
9 our body politic.

10 But there's a second aspect, a second strain  
11 in our DNA, which is a deep suspicion of those who wield  
12 power in our country.

13 Now you can deny it and say, "No way,  
14 Aquino, that's just not true."

15 If you do deny it, how do you explain the  
16 Bill of Rights -- which is not a set of rights at all?  
17 Forget about what your high school teacher told you.  
18 It's a set of limitations on the power of the federal  
19 government. They cannot do this to you. They cannot do  
20 that to you.

21 So, in light of that, we've reached an  
22 agreement to hold the government to this heavy burden,  
23 and that agreement runs from President Washington to  
24 President Lincoln to President Roosevelt to President  
25 Reagan, to you and your families.

1                   Now, you know, in a little while, in a few  
2 minutes, the government lawyer has an opportunity to get  
3 back up here, and that's consistent with the heavy  
4 burden of proof. Again, they're the moving party in  
5 this case, and that's why she gets the opportunity to  
6 address you again.

7                   If I tried to get up here and respond, Judge  
8 Lee would reprimand me, just like he remanded the  
9 government lawyer in that whole identification mess with  
10 Gatuso. So, I can't get back up here, and I won't get  
11 back up here.

12                  But if I could get back up here, I want you  
13 to keep in mind -- I know you don't know me very well --  
14 I would respond to every single thing that she says. So  
15 keep that in mind when she's addressing you again. If  
16 Aquino had the chance to get back up there, he would  
17 respond.

18                  So, to sum up, in light of the unreliable,  
19 unreliable government evidence in this case, in light of  
20 the lack of evidence, evidence you would reasonably  
21 expect to hear from in terms of people or searches, for  
22 example, or other evidence, in light of the defense  
23 issues on the tattoos, and Mr. Cosmo, and in light of  
24 the heavy burden of proof that the government has to  
25 bear, I ask that you find Jesus Chavez not guilty of



1 each of the charges.

2 Thank you.

3 REBUTTAL ARGUMENT BY THE GOVERNMENT

4 MS. MARTINEZ: Let's go back to the  
5 beginning, Greñas and the closing arguments made by  
6 Greñas's attorneys.

7 Greñas got on the stand last week and he  
8 admitted to you that he killed Lagrima, but he denied  
9 his involvement in the attempted murder and the  
10 conspiracy to murder Peligroso.

11 And Greñas attorney got up yesterday and he  
12 gave a great argument. He gave a great closing argument  
13 with what he had to work with. And he tried to tell you  
14 that his client, everything that he said on the stand  
15 was true. It was true that he killed Lagrima, but it  
16 was also true that he was not involved in that other  
17 thing a week earlier with Peligroso.

18 And he told you that you should believe him  
19 because he doesn't have a plea agreement, because all of  
20 the government's witnesses, they all have plea  
21 agreements, and those plea agreements give them an  
22 incentive to lie. And his client didn't have a plea  
23 agreement, and so he only had an incentive to tell the  
24 truth.

25 I submit to you that that is not logical.

1 The existence or lack of existence of a plea agreement  
2 does not give Greñas a motivation to lie or to tell the  
3 truth.

4 But look at the other evidence in the case.  
5 Let's talk about the cooperating defendants who had plea  
6 agreements. I'm not going to argue to you that you  
7 should believe that they're telling the truth because  
8 they had plea agreements.

9 No. We talked at length yesterday about  
10 corroboration. You should believe their testimony, I  
11 submit to you, because it is consistent with the other  
12 evidence you have seen.

13 So, let's look at Greñas's testimony about  
14 his role in the Peligroso incident. That testimony is  
15 not corroborated by phone calls. It is not corroborated  
16 by the testimony of other witnesses. In fact, it is  
17 contradicted by both. It is contradicted by the  
18 recordings that Drowsy was able to obtain by wearing a  
19 body wire and by recording phone calls, recordings in  
20 which Greñas is involved.

21 Go back and look at the transcripts.  
22 There's his name right there, while they're talking  
23 about the plan. There is his name right there, while  
24 they're talking about the machetes. There's his name  
25 right there, while they're talking about the shotgun.

1 There he is in the calls advocating to use the 12. His  
2 testimony is not corroborated. It is contradicted.

3 And then it's contradicted again by his own  
4 statements two months later in that December call that  
5 we looked at yesterday, where he says, "We were going to  
6 do a hit, and they caught him" -- Demente -- "with the  
7 12." "We were going to do a hit." Because that's  
8 exactly what it was that he was going to go do, a hit on  
9 Peligroso.

10 Now the other thing that Greñas's attorney  
11 said is that by getting on the stand and by testifying  
12 as a member of MS-13, he faces a death sentence. Those  
13 were his words, a death sentence.

14 So that's what he has argued to you, that  
15 his client got up on the stand and now that's it. Now  
16 he's going to be green lit, now he's going to be killed  
17 and, I guess, what, it was a brave thing that he did?

18 No, no, absolutely not. Here is why you  
19 know that's not true. Because on cross-examination,  
20 when he was asked to talk about other homeboys, when he  
21 was asked about Poison and El Tigre down in El Salvador,  
22 when he was asked about who sent him that gun from  
23 California, when he was asked about who sent the drugs,  
24 each time he said, "A homeboy," "I can't say," "I don't  
25 know," "I won't say."

1                   Yeah, exactly. He won't say. He won't say  
2 because that would be snitching. That could get him  
3 green lit. That could be a death sentence. He was not  
4 willing to do that.

5                   The only people he was willing to name are  
6 the people whom he perceives to already be snitches. He  
7 would only snitch on the snitches, because he sees that  
8 as different.

9                   And I submit to you that he either knows or  
10 hopes or believes that the rest of the gang sees that  
11 differently, too. And so he got up on that stand and he  
12 snitched on the snitches, and then he claims that no one  
13 else had anything to do with it.

14                  The other thing that Greñas's attorney said  
15 is, you know, "Ms. Martinez, she says in her closing  
16 that he's trying to exonerate all of these people, but  
17 that's silly because he only knows about the first few  
18 things, and then he gets himself arrested before the  
19 murder of Lil Guasón."

20                  No, no, no, no, no; that argument is silly.  
21 Because what Greñas was doing on that stand was trying  
22 to tell you that all of the government's witnesses, and  
23 in particular the five cooperating defendants, that  
24 they're all lying.

25                  Well, if you believe that they're all lying,

1 then you will acquit these people sitting behind me, Not  
2 just the ones about whom Greñas has direct knowledge,  
3 not just them, but the others, too, right? That would  
4 be the logical conclusion. If you think that all of the  
5 evidence we presented was just false, was just lies, you  
6 would acquit them all.

7                   And so think of that benefit to Greñas if  
8 these guys all get back out on the street, and he's in  
9 jail, like Payaso, who was running the clique from  
10 inside. Think of the benefit to him when you think  
11 about what his motivations were and what he said on the  
12 stand.

13                   Next, Solitario. His attorney made a number  
14 of arguments about why he says that his client should  
15 not be convicted. He seems to concede that he was  
16 there. He seems to concede that he was involved. But  
17 he says that you should not convict him. So let's look  
18 at that.

19                   First of all, one of the things that  
20 Solitario's attorney argued about was the evidence that  
21 he claims that we didn't present. And, you've actually  
22 heard that argument from a number of defense attorneys,  
23 so let me just address that head on. I have two things  
24 to say about that.

25                   First of all, the jury instructions do not

1 tell you that there's any particular kind of evidence  
2 that we have to present to you. You do not have to see  
3 DNA evidence in order to convict. You do not have to  
4 see fingerprints in order to convict. What we have to  
5 do is prove every element of every charge beyond a  
6 reasonable doubt.

7 And I submit that we did that to you. We  
8 can do that, per the jury instructions, per Judge Lee's  
9 instructions, with direct or circumstantial evidence.  
10 And we have given you quit a bit of all of that.

11 There's nothing that requires us to put on a  
12 particular witness, nothing. There's nothing that says  
13 that every single person who might know something about  
14 every single thing that happened has to testify.

15 No. We simply have to prove our case to you  
16 beyond a reasonable doubt, which I submit that we did.

17 And, here's the second thing I have to say  
18 about these arguments that we didn't put on certain  
19 evidence, and that's this: Now, the burden is with us.  
20 It is always with the government. It never shifts to  
21 the defense. And I am not trying to say that at all.  
22 And defense counsel and the defendants, they don't have  
23 to do anything. That's -- that's our system. That's  
24 our Constitution. I believe in that. They do not have  
25 to put on evidence. They do not have to call witnesses.

1 They do not -- certainly do not have to testify. That  
2 is their constitutional right. It's something that we  
3 uphold and we protect.

4 That being said, they are allowed to put on  
5 witnesses and they are allowed to put on evidence, and  
6 they did that in this case. They called witnesses to  
7 the stand to testify. They introduced exhibits that you  
8 will have back in your deliberations, along with all of  
9 the government exhibits. They are able to do that.

10 And so, if there was evidence that they knew  
11 about that they thought was important, they were able to  
12 present it to you.

13 So, let's go back to Solitario, and  
14 Solitario's defense attorney. He says that there was a  
15 call or calls, transcripts that should have been  
16 presented, that would have exonerated his client.

17 Well, if there were, he could have put that  
18 evidence in.

19 Defense attorneys can call linguists. In  
20 fact, they did. They put a linguist on the stand, who  
21 listened to those recordings and talked about what was  
22 in those recordings and translated those recordings.  
23 They have the ability to do that, if that's what they  
24 wanted to do.

25 Now, as many of these lawyers said, there

1 were thousands of calls on Junior's wire. It's true, we  
2 did not bring it -- bring you all in here and have you  
3 sit here for months and months and months and look at  
4 transcripts of thousands of calls. I submit that that  
5 would have been a waste of your time --

6 MR. CHICK: Your Honor, I'm going to object  
7 to -- can we approach?

8 MS. AUSTIN: Yes.

9 MR. SALVATO: Yes, please.

10 THE COURT: Come to sidebar.

11 (Thereupon, the following sidebar conference  
12 was held:)

13 MR. CHICK: Your Honor, the government is  
14 improperly and unconscionably commenting on our failure  
15 to produce evidence in this case. It is absolutely,  
16 absolutely improper for them to do that. And I would  
17 ask that they be admonish for it and that it stop now.  
18 It's completely inappropriate for them to do that, and  
19 they know it.

20 THE COURT: Ms. Austin.

21 MS. AUSTIN: I would ask Your Honor to  
22 reinforce the instruction that we are not required to  
23 present any evidence. The argument of government  
24 counsel went way over the line on this issue, and it was  
25 highly improper.



1 MS. MARTINEZ: Your Honor, I disagree. I  
2 actually said very clearly that they are not required to  
3 present any evidence, they're not required to put on any  
4 testimony, and they're not required to testify. That's  
5 what our Constitution says. And that's -- and that's  
6 what we all here believe in.

7 And then I added that they can, if they want  
8 to -- and they made arguments directly that there was  
9 evidence -- that they think there was evidence the  
10 government didn't put on. Well, they have that  
11 evidence.

12 I should be allowed to respond to that.  
13 Otherwise, it's left with the implication there's  
14 evidence out there that they know about, but, hey, the  
15 government didn't put it on, so that means that -- that  
16 there's exculpatory evidence that the government hid  
17 from the jury.

18 And if that's -- that is an improper  
19 argument, without the ability of the government to  
20 respond to that.

21 MS. AMATO: Your Honor, excuse me --  
22 Ms. Amato -- it's improper for the government to put the  
23 burden on us. And what they're doing is, they're  
24 putting in the jury's minds that we have a burden.

25 And I understand she tried to gear it up, as

1 if to hide that, but the problem is, it comes to the  
2 jury that the defense should have done something, and  
3 they didn't. And that's just improper, because she is  
4 shifting the burden to us. We don't have to do  
5 anything. But we can argue that the government should  
6 have done things.

7 MR. JENKINS: Your Honor, I would join in  
8 and echo Ms. Amato's comments. While I understand the  
9 government counsel feeling as though it places her in an  
10 unenviable position, that she has to listen to defense  
11 counsel point out about what the government did not  
12 produce, as the Court has already instructed this  
13 jury -- and I also join my fellow defense attorneys --  
14 if the Court is not inclined to grant my request for a  
15 mistrial as a consequence of the government stepping  
16 over the line, Your Honor, that what the government  
17 counsel did was improper.

18 The defense does not have the burden of  
19 proof or production. And, even though she said what she  
20 said, prior to crossing the line she did make an  
21 argument to this jury that suggests to them that we had  
22 an obligation to produce evidence.

23 THE COURT: All right.

24 MR. SALVATO: We all join, Your Honor.

25 THE COURT: I'm sure you do.

1 Go ahead.

2 MR. LEIVA: Not all defense counsel raised  
3 that issue in closing. And if the government believes  
4 that one or two may have invited that, she basically  
5 generalized it to everyone who is involved in this case.  
6 So that would also be a basis for our objection and our  
7 request for a mistrial as well, Your Honor.

8 MS. MARTINEZ: May I respond to that part,  
9 Your Honor?

10 THE COURT: I want to make sure everybody  
11 had a chance to say what they want to say.

12 MS. MARTELL: Katherine Martell on behalf of  
13 Mr. Castillo. We also join in the motion for a  
14 mistrial. I think at this point, although government  
15 counsel, like Ms. Amato said, did try to hide the fact  
16 that she was burden shifting -- she stated the law  
17 correctly -- but after that, she -- what she did after  
18 stating the law was shift the burden onto these  
19 defendants.

20 Specifically, she said for people who raise  
21 the issue of lack of evidence -- which is an issue that  
22 defense counsel raises in every case, the lack of  
23 evidence -- she went on to say that the defense could  
24 have put the lack of evidence in front of this jury.

25 That is not our burden. If there is a lack

1 of evidence, they are to look to the government, not to  
2 the defense to put that evidence on. We don't have a  
3 burden to prove innocence here. They have the only  
4 burden.

5 And I would ask, Your Honor, if you deny a  
6 mistrial at this point, that you instruct this jury as  
7 to what the burden is, and that Ms. Martinez be  
8 admonished for what she tried to do.

9 THE COURT: Everybody finished?

10 MS. MARTINEZ: Your Honor, with respect to  
11 the argument Mr. Leiva raised, I was actually very  
12 specific in talking about Mr. Chick, in his argument,  
13 said that there was a call, that there was a call, and  
14 that that call would have exonerated his client.

15 I was very specific that if that -- that he  
16 could have put that call on if he wanted to do that.  
17 That is a -- that is a proper argument, I submit, Your  
18 Honor, because it responds directly to a very specific  
19 argument raised by defense counsel.

20 With respect to what -- what Ms. Martell  
21 just said, my broader argument about lack of evidence,  
22 again, I was very clear about that, that there's no  
23 instruction that we have to give certain types of  
24 evidence.

25 Those are two separate arguments that I

1 made, one about not being required to put on DNA or  
2 fingerprint, that sort of thing; and then specifically,  
3 with respect to Mr. Chick's argument, about a particular  
4 call that he says exists, that he could have put on  
5 testimony about --

6 MR. CHICK: The difference is, we are  
7 allowed --

8 THE COURT: One person is talking.

9 MS. MARTINEZ: And to be clear, Your Honor,  
10 I teed that up with the burden and the Constitution and  
11 the fact that the defense never has to put on any  
12 evidence. I was very clear. I spent more time on that  
13 part than I did on the subsequent argument.

14 I do not think that a line was crossed. And  
15 I apologize if Your Honor does, but I do think it was a  
16 proper argument.

17 THE COURT: Let the record reflect this  
18 matter is before the Court through an objection in  
19 closing argument about whether the government somehow  
20 invited error by argument that the defense could have  
21 called witnesses, and, specifically, the argument  
22 addressed to Solitario's closing argument wherein  
23 Solitario's counsel claimed to the jury that there was a  
24 call that could have exonerated his client.

25 I made note of that in my notes. That was

1 something that he said. And I think that the government  
2 certainly had the right to respond to it.

3 I think the government set forth a preface  
4 for the argument about the burden of proof that was more  
5 than sufficient.

6 And bear in mind, throughout this entire  
7 trial, from jury selection through opening, preliminary  
8 instruction, through the 108 pages of instructions that  
9 I read yesterday, this jury ha been fully informed of  
10 the burden of proof. And they've also been informed  
11 that the arguments of counsel are not evidence.

12 So the motion for mistrial will be denied.

13 Thank you.

14 (Thereupon, the side-bar conference was  
15 concluded.)

16 THE COURT: You may proceed.

17 MS. MARTINEZ: As I was saying, defense  
18 counsel for Solitario told you that there is a call out  
19 there that you didn't get to see that somehow exculpates  
20 his client.

21 But he had the ability to put on evidence.  
22 He did not have the requirement to do so. That's -- all  
23 of those defendants have the right to not put on  
24 evidence. They have the right to hold the government to  
25 its burden, as -- and the government always has the

1     burden. But, they can put on evidence. They can.

2                     And so, defense counsel for Solitario, he --  
3     what he basically argued was: If you look at the  
4     transcripts that the government did put in, yeah, that  
5     makes my client look guilty. But, what about the one  
6     that they didn't put?

7                     Well, what about that? We don't have that  
8     in front of us. Neither party presented that alleged  
9     evidence.

10                    What we do have, and what you do have, is  
11    the evidence that was presented during trial. And that  
12    is the evidence that you should consider, that you must  
13    consider when you deliberate and when you determine  
14    whether, in fact, the government did meet its burden of  
15    proving each and every element of each and every crime  
16    that was charged.

17                    Now, the other thing that the defense  
18    counsel for Solitario said was -- and I wrote it down --  
19    he said that his client was never given the opportunity  
20    to do the right thing.

21                    Really? He was never given the opportunity  
22    to do the right thing?

23                    Who was it that was supposed to give him  
24    that opportunity?

25                    He had the opportunity to do the right thing

1 for quite some time. He was a *chequeo* at the time that  
2 he murdered his friend, Lil Guasón. You know about the  
3 gang. You know about the levels in the gang. He was a  
4 *chequeo*. So before that, he must have been a *paro*. And  
5 before that, he wasn't associated with the gang.

6 So he had the opportunity to do the right  
7 thing by not associating with the gang. He had the  
8 opportunity to do the right thing by not advancing from  
9 *paro* to *chequeo*. He had the opportunity to do the right  
10 thing as he learned more and more about the gang, as he  
11 learned what they did, who they are, what they do. He  
12 had that opportunity.

13 You all know, and I submit that they, those  
14 defendants, all know, what this gang is about, and that  
15 includes Solitario.

16 You've heard countless testimony about how  
17 violent this gang is, how violence is the bread and  
18 butter of MS-13, and how the *paros* and the *chequeos* and  
19 the homeboys are taught that. They're taught the rules  
20 and they're taught about violence.

21 Look at this call from Leopardo on May 8th.  
22 At the bottom of the screen he says, "Everyone knows  
23 what they got themselves into, you know. And they know  
24 the rules and they know everything."

25 Yes, exactly. When you're in the gang, you



1 know what the gang is. You know about the violence.

2 And with respect to Solitario specifically,  
3 it's not just that we know generally that those in the  
4 gang know. We know that he, in particular, knew. We  
5 know because we know that he was involved in the  
6 December 21st shooting in Culmore.

7 You heard about that from Skinny, when Lil  
8 Poison fired a gun into a window at someone who had  
9 disrespected the gang.

10 Now, I'm not saying that Solitario was the  
11 shooter, not at all. No one said that. That's not what  
12 Skinny said. But he was there. He was involved. So,  
13 in December of 2013, three months before he helped kill  
14 his friend, he was directly involved in a crime of  
15 violence as part of the gang.

16 He also knew that the gang, that this  
17 clique, that these defendants, murder people. He knew  
18 that because he knew about Lagrima. No, he wasn't there  
19 for the murder of Lagrima. I'm not arguing that he knew  
20 about it in advance and that anyone involved him. He  
21 was a *chequeo*. He was still a *chequeo* in March of 2014,  
22 when he killed Lil Guasón.

23 But, he was a *chequeo* who was trusted enough  
24 within the gang, who was respected enough within the  
25 gang, that the clique told him what they did to Lagrima.

1 They told him what they did. They told him where they  
2 did it. And they told him why they did it. And they  
3 told him that before he was involved in the murder of  
4 Lil Guasón. And, in fact, they took him to the grave  
5 site, again, before the murder of Lil Guasón.

6 So think about that for a minute. When he  
7 went into that park on March 29th, 2014, he had been  
8 there before. He had been there to visit the grave site  
9 of Lagrima.

10 And then he goes in on March 29th, 2014, and  
11 what do you know? He's involved in a murder, with the  
12 same MO. He knew what they did to Lagrima. He knew  
13 that they lured him to the park on the premise of a gang  
14 meeting, told him they would give him a *calentón*, and  
15 then killed him instead. And that's what they did with  
16 Lil Guasón.

17 And, by the way, the other thing that you  
18 heard testimony about with Solitario and what he knew  
19 about Lagrima was that he expressed approval, that he  
20 said that he liked what the gang had done because  
21 Lagrima was a snitch.

22 You know, you have evidence of Solitario's  
23 guilt, of the malice that he held when he helped kill  
24 Lil Guasón, and of the intent that he had when he did  
25 it. You know that from evidence before, during, and

1 after the murder.

2 Before, we've just covered, him being  
3 brought up within the gang, him knowing the rules, his  
4 involvement in previous violent -- at least one previous  
5 violent crime, and his knowledge of Lagrima. But, you  
6 also know about what happened during, during the murder.  
7 Okay?

8 And so, let's -- again, let's talk about  
9 that. He walks into Holmes Run Park. He knows that  
10 Holmes Run Park is where they killed Lagrima. He knows  
11 that Holmes Run Park is where Lagrima is buried. And he  
12 walks in.

13 And so does Lil Guasón, right? He walks  
14 into Holmes Run Park. You also heard that Lil Guasón  
15 knew what the gang did to Lagrima.

16 Here's the other thing. There's evidence  
17 that Lil Guasón knew that he was going to be killed.

18 Look at this transcript. This is Leopardo  
19 talking about Lil Guasón. "We talked, you know, like  
20 indirectly, you know, but everything was for him, you  
21 know what would happen if you fuck a homeboy's  
22 girlfriend. You know what would happen to you."

23 So then Junior is asking, "Well, the son of  
24 a bitch should have realized, then."

25 And Leopardo responds at the bottom of the

1 screen, "No man, the dude already knew. The dude  
2 already knew that -- that we were going to hit him. The  
3 dude already knew that we were going to roll him up."

4 Yeah, that's what he's saying. He's saying  
5 that Lil Guasón knew that he had broken so many rules,  
6 that he had slept with Skinny's girlfriend, that he  
7 wasn't paying back the money, that he was disrespecting  
8 the homeboys, the clique, and the gang. And so he knew  
9 what the consequences of that would be.

10 And Solitario, Lil Guasón's friend, who was  
11 also a *chequeo*, who was in the same status as Lil  
12 Guasón, I submit to you that you can conclude that he  
13 knew as well.

14 If he was really his best friend, you don't  
15 think he knew that Lil Guasón was in trouble with the  
16 gang?

17 He's with the gang. You don't think he knew  
18 that Lil Guasón was breaking these rules?

19 Now, as I told you yesterday, you've heard  
20 testimony in both directions about whether or not  
21 Solitario was actually told and involved in the planning  
22 of the murder. You've heard both sets of testimony.

23 I submit to you, that's irrelevant. It is  
24 not relevant whether or not he was at some meeting where  
25 they specifically planned what they were going to do

1 with Lil Guasón. You can disregard that. You don't  
2 need premeditation in order to convict; first or second  
3 degree murder, either one, either one results in guilt,  
4 and this was certainly second degree murder.

5 Now, the other thing -- well, let's -- and  
6 let's talk about why it's second degree murder. Second  
7 degree murder requires malice, and, Solitario's attorney  
8 spent a long time talking to you about what malice is  
9 and why his client didn't have malice.

10 But if you look at the jury instructions,  
11 one of the things that the instructions say is that you  
12 can infer malice from the use of a deadly weapon.

13 A knife is a deadly weapon. And Solitario's  
14 attorney basically admitted that his client did stab Lil  
15 Guasón. Well, that's not evidence, but we have  
16 evidence, we have lots of witnesses and we have lots of  
17 calls, that say just that. Solitario stabbed Lil  
18 Guasón. He used a deadly weapon. You can infer malice  
19 just from that.

20 So -- so, Solitario's attorney tells you:  
21 But he panicked. He panicked.

22 Right? That's the version. He panicked.  
23 He panicked, and so he didn't want to do it. He  
24 panicked, but he was threatened. He panicked, and so  
25 then he didn't have the requisite intent. He didn't

1 have malice.

2 I submit to you that is not actually what  
3 the evidence shows. It's not. It's not exactly what  
4 the witnesses testified to, and it's not exactly what  
5 the calls say.

6 Here's one call about that, all right? So  
7 this is two days, just two days, after the murder, and  
8 here's what Lil Poison is saying about Solitario: "That  
9 -- that he proved to us who he really is. Our recruit  
10 proved it to us."

11 Yeah, he proved it. He proved that he was a  
12 solid recruit. He proved that he could participate in a  
13 murder.

14 And what Pesadilla said: "The homeboy is  
15 already wet, you know." Again, two days after the  
16 murder. And you heard testimony from Junior about what  
17 that means, "already wet." "Already wet" means he's  
18 already committed a murder, which he had done two days  
19 ago.

20 So, like I said, you have evidence from  
21 before, during and after. Right? And we're getting  
22 close to the after part. This is two days after.

23 And here is the thing that you know, is that  
24 afterwards, the gang still included Solitario in  
25 activities. He was still in with the homeboys. In the

1 calls with Junior, they're talking about how Solitario  
2 is ready to be jumped in because of that murder, and  
3 he's just waiting for Friday the 13th.

4 If he had actually panicked, if he had said,  
5 "No, I don't want to," if he had chickened out, he  
6 wouldn't still be in with the gang.

7 And let's go back to that, he didn't have an  
8 opportunity to do the right thing. Sure he did, and he  
9 didn't. Right?

10 I mean, not only did he not walk away from  
11 the murder that night, he didn't walk away from the gang  
12 afterwards. He could have done that. He could have  
13 been like Drowsy. But he didn't. He stayed with the  
14 gang. He continued selling drugs for the gang.

15 You heard Detective Betts. He stopped him  
16 sometime after the murder. He still had drugs on him.  
17 He was still hanging out with the gang members.

18 You know that what he did after the murder  
19 was he continued hanging out in Culmore, continued  
20 selling drugs. And then when it got too hot, he fled to  
21 Kansas City with the people whom his attorney says were  
22 threatening him. Really?

23 With Slow, with Leopardo, with Lil Poison,  
24 he goes to Kansas City to, as Slow told you, both get  
25 away from the police and to help build up their clique

1 down in Kansas City.

2 So let's get back to this whole "he  
3 panicked" argument. Because you actually have seen some  
4 evidence of someone, of a *chequeo*, initially panicking  
5 during a murder. Solitario was the *chequeo* at the Lil  
6 Guasón murder. Slow was the *chequeo* at the Lagrima  
7 murder.

8 And here's what Greñas says about Slow at  
9 the Lagrima murder. Junior says at the top there, "None  
10 of them panicked?"

11 And then Greñas says, "Fuck, he panicked.  
12 He panicked. And I told him, 'Oh, today you leave, son  
13 of a bitch. From here, nothing has to come out.' He  
14 grabbed the knife from me, homie, and started to cut him  
15 up all over, without mercy."

16 And again, at the bottom of the screen, you  
17 can see in the middle there, Junior helps clarify who  
18 we're talking about, Slow. And then at the bottom of  
19 the screen, "Respect for that son of a bitch, because  
20 that son of a bitch has turned out to be solid for us.  
21 He grabs the knife without mercy, too, son of a bitch."

22 So, in other words, Slow, the *chequeo*, who's  
23 at this murder in order to get wet, in order to prove  
24 that he can be a homeboy, when the murder starts, he  
25 panics. He initially panics. But then he grabs the



1 knife and he stabs him without mercy.

2 And after that murder, he gets to become a  
3 homeboy and he stays with the gang, just like Solitario  
4 did, and the gang continues to respect and trust him,  
5 just like they did with Solitario; the difference being,  
6 of course, that then Solitario got arrested. Slow, it  
7 took longer to arrest him, and so, after getting wet,  
8 after being jumped in, after his initial panic with the  
9 Lagrima murder, he went on to kill someone else.

10 And I submit to you that, if anything, is  
11 how -- is how Solitario's behavior that night would best  
12 be described.

13 The fact that he initially panicked, if that  
14 is indeed what happened, that he initially panicked  
15 while watching someone be killed, well, okay, I guess  
16 that makes him better than, I don't know, Leopardo, who  
17 really, really seemed to enjoy it. But it doesn't make  
18 him not guilty.

19 Because, when he then choose to participate,  
20 when he choose to participate, when he used a deadly  
21 weapon on his friend, that was murder. That was aiding  
22 and abetting the murder of Lil Guasón.

23 And so, like I said, afterwards, for a  
24 couple months afterwards, he continues hanging out with  
25 the gang, continues selling drugs, goes down to Kansas

1 City with his buddies to flee. And on that point, about  
2 the going to Kansas City to flee, you don't have to flee  
3 from the police in order to be guilty, right?

4 I mean, you've heard some argument about  
5 that, that Pesadilla didn't flee. Well, he kind of did.  
6 He moved to Gaithersburg, Maryland. But you also heard,  
7 for example, that Lil Payaso didn't leave the area.

8 Well, I'll just remind you, neither did  
9 Duende. And I don't think anyone in this room is saying  
10 that Duende wasn't guilty. Duende was certainly guilty.  
11 He also didn't leave the area. So fleeing from the  
12 police, yes, that can be evidence of guilt. And I  
13 submit that for Solitario, it was. But, you don't have  
14 to flee in order to be guilty, just like Duende.

15 All right. Let's talk about some of the  
16 arguments that multiple defense counsel made with  
17 respect to Count 6, the murder of Lil Guasón. Many of  
18 them made this argument that even if there was a murder,  
19 it wasn't a murder in aid of racketeering. There was no  
20 purpose that was required.

21 I submit to you that that argument is  
22 ridiculous in light of the evidence. Look at what these  
23 defendants said about why they killed Lil Guasón.

24 Leopardo, "The one that steals from the  
25 clique, homeboy, you know, the one that breaks the

1 rules, you know, of the hood, you know, that dude is  
2 trash. For stealing from the clique, you know, for  
3 bullshitting, for bullshitting all the homeboys and  
4 making fools of all the homeboys, you know."

5 That's why they killed Lil Guasón. That is  
6 absolutely in relation to the gang. It's directly in  
7 relation to the gang.

8 In fact, here's what Pesadilla says, "The  
9 Mara's train has taken you, you son of a bitch, for  
10 being a fool."

11 The Mara, the Mara has taken you; not, you  
12 know, we did it out of some personal vengeance or  
13 because -- and how does that make sense, anyway?

14 What's the, it's a personal crime?

15 Why, because Skinny was mad at him over  
16 something, or there was some personal money involved?

17 Well, then, why were Leopardo and Pesadilla  
18 involved? There was nothing alleged there that they had  
19 some personal animus against Lil Guasón. No. They were  
20 involved because this was a gang hit. This was a gang  
21 murder.

22 Now, you also heard a lot of argument about  
23 how there was all this contradiction about who cut off  
24 Lil Guasón's head, and somehow that means that the  
25 government witnesses aren't believable or aren't

1 credible.

2 But -- and I'm sorry to have to talk about  
3 that, because it's disgusting, but we have to talk about  
4 it. Okay? They did cut off his head. You know that  
5 they cut off his head, just like they said in the calls,  
6 because when the FBI found that body, his head was  
7 underneath him. It was severed from his body.

8 And you also know what weapons were used  
9 during that murder. It was knives. You know that  
10 because that's what the people who were there told you.  
11 But you also know that because that's what the forensic  
12 evidence, the examination of the body, showed. It was  
13 knives that killed him. Right?

14 So, it wasn't a guillotine. Think about how  
15 his head was chopped off. It wasn't one chop and it's  
16 gone. I'm sorry, I'm sorry to have to talk about it,  
17 but think about it. It was not one chop. There wasn't  
18 even a machete involved in that murder. It was not one  
19 chop and the head is off. It was stabbing, repeatedly,  
20 in the back of the neck and in the side of the neck.

21 Look at the autopsy report. Look at Dr.  
22 Hunt's report. Recall the testimony of those doctors.  
23 Recall when Dr. Hunt said that the vertebrae way at the  
24 top, way at the base of the skull, was so damaged that  
25 someone had to have been shoving a knife way up in there

1 in order to cause that damage.

2 Lil Guasón's head was cut off over a period  
3 of time with multiple stab wounds.

4 So, I submit to you that when people say  
5 this person or this person helped cut off the head,  
6 yeah, that makes sense. That makes a lot of sense,  
7 because it probably took multiple people to sever his  
8 head from his helpless body. And every single one of  
9 the people who were there for that murder committed  
10 murder or aided and abetted murder.

11 And you've heard all these arguments about  
12 how, you know, if they were just there, then they're not  
13 guilty. Or if they -- I mean, really, this argument was  
14 made: If they cut off his head after he was dead, then  
15 they're not guilty.

16 Well, I have good news for you. The law  
17 doesn't have that kind of loophole. I hope that you are  
18 glad to hear that it's not a defense to say, "Hey, yeah,  
19 I showed up for this murder, and I just stood and  
20 watched. I watched while the murder happened. And then  
21 I waited. And then when I was, you know, pretty  
22 confident that he was dead, then I helped cut his head  
23 off. But guess what. I'm not guilty. That makes me  
24 not guilty."

25 No, no, no, no, no, that's not what the law

1 says. That is absolutely not what the law says.

2 Each of these defendants, the four who were  
3 charged with murdering Lil Guasón, as well as those who  
4 are charged with the other crimes, are charged with  
5 either committing the act itself or aiding and abetting,  
6 And either one results in guilt.

7 So, let's talk about what aiding and  
8 abetting is. Now, they're -- defense attorneys are  
9 right, mere presence isn't sufficient, and that is what  
10 the jury instructions say. But if you look at the  
11 evidence, there is no evidence that any of these were --  
12 any of these defendants were merely present for the  
13 crime.

14 They all participated, all of them; and  
15 that's aiding and abetting. Stabbing is aiding and  
16 abetting. Helping dig the hole is aiding and abetting.  
17 Encouraging is aiding and abetting. Any sort of  
18 involvement with that murder is aiding and abetting.  
19 And, I submit to you that the evidence is abundantly  
20 clear that all four of them, at a bare minimum, aided  
21 and abetted that murder.

22 All right. Next, Talibán. His attorney  
23 just argued just before me, and he argued that we had  
24 contradictory evidence, and that it doesn't make any  
25 sense and that we didn't prove that Jesus Alejandro

1 Chavez, Talibán, committed that murder.

2 I submit to you that, no, in fact, we did.  
3 So let's talk about what the defense attorney said about  
4 why he thinks the evidence is confusing.

5 Well, he basically prepared two different  
6 theories of the murder to you. First, that either  
7 Duende or Gatuso was the actual shooter; and second,  
8 that David Jimenez was the shooter.

9 Let's deal with that second argument first,  
10 because it's the most ridiculous. Really? David  
11 Jimenez was the shooter?

12 Well, if David Jimenez was the shooter, that  
13 exculpates Duende and Gatuso, right? They're not guilty  
14 of aiding and abetting the murder of Julio Urrutia if,  
15 in fact, Julio Urrutia was shot and killed by David over  
16 some drug deal gone wrong.

17 Why in the world would Duende and Gatuso  
18 plead guilty, then?

19 That theory makes no sense. And one of the  
20 things that you get to do when you evaluate the evidence  
21 is you get to use your common sense. You should use  
22 your common sense. That argument makes no sense.  
23 There's no support for it.

24 What did he cite? He cited the testimony  
25 that you saw in the videotape deposition of someone who

1 was inside, heard, but didn't see the shot, so didn't  
2 see who shot, but did see David Jimenez before and  
3 after.

4 Well, yeah, sure, David was there. We know  
5 that. We know that from Vidal. We know that from the  
6 detectives who reported to the scene. David was there.  
7 David was bending over the victim and trying to help,  
8 Both when Vidal got back and when the detectives got to  
9 the scene. David was not the shooter.

10 And you heard something about maybe he went  
11 and put something in the woods. Okay, sure. Yeah, I  
12 mean, you heard some information about David being  
13 involved in drug deals. You also heard information  
14 about David's little brother involved in a drug deal.  
15 In fact, that's why they chased him that night.  
16 Remember?

17 When the four of them -- Talibán, Duende,  
18 Gatuso and Sixto -- chased those two kids, it was  
19 because they thought they saw two kids, including David  
20 and Vidal's younger brother, engaging in a drug  
21 transaction that wasn't permitted in MS territory.

22 So, I don't know, did David go hide  
23 something in the woods? Maybe. Maybe it was drugs.  
24 But that's irrelevant to the question of who actually  
25 shot the victim. Because you know by your common sense



1 it wasn't David. If it had been David, he wouldn't have  
2 stuck around. And if it had been David, Duende and  
3 Gatuso would not have pled guilty to aiding and abetting  
4 that murder, right?

5 So let's look at the next theory, the theory  
6 that it was either Duende or Gatuso. And so, defense  
7 counsel starts talking about tattoos.

8 And I think that's ironic. I think it's  
9 ironic that the defense counsel spent so much time  
10 talking about tattoos -- well, some tattoos, arm  
11 tattoos -- when he skipped his client's own tattoos.

12 Some of the most incriminating evidence  
13 against his client -- this guy (indicating), by the  
14 way -- is this: The same slide that I showed you  
15 yesterday, that shows pictures of Jesus Chavez's  
16 tattoos, and excerpts from a transcript where Duende  
17 tells Junior, two weeks after the murder, who did the  
18 murder by describing his tattoos. Right? He describes  
19 the seal on his stomach and he describes the writing,  
20 "Sorry Mother for your tears," in Spanish across his  
21 chest.

22 And Duende is not the only one who describes  
23 these tattoos. Gatuso, on the stand, when he testified,  
24 when he was asked if he remembers Talibán having any  
25 tattoos, he described the seal on his stomach, as well.

1 Defense counsel made much of the fact that  
2 Gatuso was not able to identify his client in court.  
3 Well, first of all, this picture, this comes from the  
4 lineup that Vidal did. This is the picture that Vidal  
5 identified as the shooter, and this picture is of Jesus  
6 Alejandro Chavez. This is what Vidal was able to  
7 recognize as the person who shot Julio Urrutia that  
8 night.

9 So, take a look at what he looked like then  
10 and take a look at what he looks like now. It's been  
11 two years. Gatuso spent eight days with him. But you  
12 know from testimony -- in fact, testimony that was  
13 brought out on cross-examination -- that Gatuso was able  
14 to pick Talibán, Chavez's photo from a lineup that  
15 night, and he was able to tell you about Talibán's  
16 tattoos, and he was able to recognize him from a  
17 photograph that we showed as well.

18 There's no question that Gatuso and Duende,  
19 in their testimony, were talking about the same person.  
20 There's no question that Duende, in that call with  
21 Junior, was talking about the same person.

22 So, let's talk about the series of  
23 coincidences that would have had to have happened for  
24 Chavez to not be the shooter. Here are all the things  
25 that you would have to believe to believe that he's not

1 the shooter, right?

2 So, you have to believe that Duende is lying  
3 in that call on June 27th when he says that the  
4 shooter -- that people involved were him and Gatuso and  
5 Talibán, and that Talibán was the shooter. You have to  
6 believe that Duende was lying then, 13 days after the  
7 shooting.

8 But why would you believe that?

9 What motivation did Duende possibly have to  
10 lie at that point?

11 Now, defense counsel says: Well, because he  
12 thought he was going to get in trouble with the gang.

13 I submit that's ridiculous. All the  
14 testimony you've heard shows that you actually rise up  
15 in the gang, you gain respect, you gain status, when you  
16 kill someone. You don't get in trouble.

17 Now he says, well, but it wasn't authorized  
18 or it wasn't approved or it wasn't sanctioned in  
19 advance.

20 That doesn't mean that you don't gain  
21 respect in the gang when you do something like that.  
22 Look what Duende said in that call. "Remember, when one  
23 gets an opportunity like that, dog, you know, hey,  
24 you're not going to let it pass."

25 And that's exactly right. Talibán did not

1 let that opportunity pass.

2 So, you would have to believe that Duende  
3 was lying in that call.

4 Also, you would have to believe that when  
5 he's lying, he came up with a particular person to lie  
6 about, right? Because he's clearly talking about Jesus  
7 Chavez. He describes his tattoos. There's no question  
8 that's the person he's talking about. Right?

9 And it's also clear that that's who Gatuso  
10 is talking about, the guy who just got out of jail.  
11 Duende and Gatuso told you that. And he did. He had  
12 been out of jail, out of prison, for eight days before  
13 he shot Julio Urrutia; eight days, and he shoots someone  
14 point blank in the face.

15 Okay. So, Duende -- so here's the theory, I  
16 guess, that Duende is lying about who it was. He's  
17 thinking about this particular person, and, oh, I don't  
18 know, coincidentally that particular person's phone  
19 was in the area that night, as you know from the cell  
20 site analysis, and that particular person, Jesus Chavez,  
21 was also who Duende was with when he's arrested on  
22 July 2nd, right? You heard testimony about that.

23 So, Duende tells you, he looked at -- you  
24 listened to the calls, and he says: Yeah, I had those  
25 calls. Yeah, I was with Talibán, and I was with Lala at

1 that -- at their mom's house up on Duke Street.

2 Yes, that is where he was. You know that  
3 that's true because that's where the police found him.

4 You would also have to believe, in addition  
5 to Duende making up this whole lie, that Gatuso came up  
6 with the same lie.

7 Now, Gatuso didn't turn himself in until  
8 August. It was more than a month later. And yet  
9 somehow he has the exact same story as Duende?

10 Now, they didn't point the finger at each  
11 other, right? Duende didn't say, "Gatuso did it."  
12 Gatuso, "Duende did it." No, no. They both -- at the  
13 end of the day they both say Talibán say it. They both  
14 say that this guy did it, this guy, whom Vidal Jimenez  
15 also said did it.

16 So, that would be another coincidence that  
17 you would have to believe, that somehow Vidal manages to  
18 pick this photo, this photo, this person, the same  
19 person as the cooperating witnesses said. Duende said  
20 it two weeks before -- after the murder. Gatuso said it  
21 in August. Vidal picked that photo. The evidence all  
22 points to Talibán, Jesus Chavez. His phone was in the  
23 area. And he was with Duende on July 2nd when he and  
24 Duende were arrested.

25 Now, I've talked about a lot of Duende just

1 now and a little bit about Gatuso, but I want to talk,  
2 generally speaking, about the cooperating defendants  
3 that you've heard from, because you've heard a lot of  
4 argument about why you shouldn't believe them, and  
5 you've heard a lot of argument about how dirty the  
6 government is for making deals with murderers like this,  
7 and I want to address that head on.

8 Because, here's the thing: They committed  
9 these murders, two of them, in a dark park at night,  
10 with only gang members there. And then the shooting was  
11 random and it was quick.

12 The witnesses to these crimes, and to the  
13 Peligroso crime as well, the witnesses are gang members.  
14 They are. They're gang members. They're criminals.  
15 They're murderers; yes, absolutely. We put multiple  
16 murderers on the stand. Yes.

17 We made deals with multiple murderers, yes.  
18 We entered into plea agreements with multiple murderers,  
19 yes.

20 What would you have us do?

21 Would you have believed the evidence if none  
22 of those witnesses testified?

23 If all you had was the calls, would it be  
24 enough?

25 Or would you be forced to acquit some or all

1 of these defendants?

2 So what's better? What's better?

3 Defense counsel talks about us putting some  
4 of these murderers back on the street after they serve  
5 significant sentences.

6 Yeah, I get that. I understand that that's  
7 distasteful. But what is more distasteful, I submit, is  
8 letting someone who committed one of these crimes be  
9 found not guilty when they are, in fact, guilty.

10 In order for you to find these defendants  
11 guilty, I, Mr. Tobler, the government, has to prove to  
12 you beyond a reasonable doubt that they did it. And  
13 that requires witnesses. It just does.

14 And the witnesses that we had, the witnesses  
15 who existed, they were people engaged in these crimes.  
16 Because with the exception of the murder of Julio  
17 Urrutia, on which there were actually innocent  
18 bystanders like Vidal Jimenez, who you heard from, with  
19 that exception, there weren't those kinds of witnesses.  
20 There was not that kind of witness to the murder of  
21 Lagrima or the murder of Lil Guasón. And so, that's who  
22 we had.

23 All right. So, if defense counsel also  
24 says: Well, actually, you know, if you think about it,  
25 probably these cooperating witnesses all got together

1 and read the indictment together and talked about it,  
2 and that's how they came up with their stories that are  
3 so similar.

4 Because they are, really, quite similar. I  
5 mean, there's a lot of details that are different, but  
6 not the big ones, not the who, what, when, where, why  
7 and how. Those match: who, what, when, where, why, and  
8 how.

9 So, as -- as defense counsel has invited you  
10 to do, go ahead and read the indictment. Please. See  
11 if it says all of the who, what, when, why and how,  
12 because it does not.

13 Lil Evil is not mentioned in that  
14 indictment. Who severed Lil Guasón's head is not  
15 mentioned in the indictment. There are a lot of details  
16 that were testified to by witness after witness after  
17 witness that appear nowhere in that indictment. They  
18 didn't learn those details from the indictment. They  
19 learned those details from their own experience, because  
20 they participated in this crime.

21 Defense counsel said that I want you to  
22 believe that there's no chance that those witnesses  
23 would lie.

24 No, I don't want you to believe that, that  
25 there's no chance that they would lie? They're



1 murderers. They're criminals.

2 Is there a chance that they would? Sure.

3 What I want you -- what I am asking you to  
4 believe, because I think you should believe it's true,  
5 is that what they testified to was true; not that there  
6 wasn't some chance that they could lie, not that they  
7 didn't ever lie in their life, not that they don't have  
8 motivations to lie; but that what they actually  
9 testified to here in front of you, that that was true.

10 And you know that it was true. It was true  
11 because it's corroborated again and again and again.  
12 They corroborated each other. They didn't get it from  
13 the indictment. But, most importantly of all, these  
14 calls corroborate it.

15 And defense counsel, for the most part,  
16 ignored that. Right? They talked about the bragging  
17 and the exaggerating in their closing arguments, but the  
18 calls do a lot more than that.

19 Yeah, there are a lot of calls where  
20 Leopardo brags about his involvement, where Pesadilla  
21 brags about his involvement, or Greñas brags about his  
22 involvement. Yes, yes, those exist, and I submit to you  
23 that they're bragging about things that they actually  
24 did.

25 But there are also calls where one or more

1 of these defendants, or the cooperators, named the other  
2 people involved. Right? That's why that's convincing.

3 I mean, the most convincing of all is that  
4 call from Lil Slow, Lil Slow, right, and Junior says,  
5 "Hey, buddy, can you tell me everyone who was there?"

6 And Lil Slow, he obliges, right? And he  
7 says: Here's the people who were there when we killed  
8 Lagrima. Here's the people who were there when we  
9 reburied Lagrima -- Pesadilla, right? Here's the people  
10 who were there when we killed Lil Guasón.

11 How is it that he magically, in May of 2014,  
12 before the indictment, before anyone is arrested, when  
13 he's talking to Junior, how is it that he gets those  
14 names right unless it's true?

15 And the same thing goes for so many others.  
16 Lil Payaso, on the murder of Lagrima. In addition to  
17 his own admissions in the calls, Slow names him. That's  
18 Government's Exhibit 19A-1, pages one to three.

19 Pesadilla, the reburial of Lagrima. In  
20 addition to his own admission, Slow names him, same  
21 exhibit, 19A-1, page one.

22 Leopardo, also in a call talks about  
23 Pesadilla's involvement in the reburial; Government's  
24 Exhibit 14A-1, page nine; and again, 16A-1, page five.

25 Lil Payaso, with respect to the Lil Guasón

1 murder, Slow again, 19A-1, page 5 to 6.

2 But also Pesadilla says that Lil Payaso is  
3 involved in the murder of Lil Guasón, in Government  
4 Exhibit 10A-1, at page nine.

5 Pesadilla's role in the murder of Lil  
6 Guasón, in addition to his admission, Slow says it,  
7 again, 19A-1, page five to six.

8 Leopardo also says that Pesadilla was  
9 involved in the murder of Lil Guasón; Government  
10 Exhibit 18A-1, page seven.

11 And Lil Payaso also says that Pesadilla was  
12 involved in the murder of Lil Guasón; Government  
13 Exhibit 23A-1, page 30.

14 Leopardo's role in the murder of Lil Guasón;  
15 in addition to his many, many admissions, Slow says it,  
16 19A-1, page six, as does Lil Payaso; 23A-1, page 30.

17 Solitario, no recorded admissions, just the  
18 testimony about what else he said.

19 But Pesadilla says Solitario is involved.  
20 Government Exhibit 10A-1, page eight.

21 Lil Poison says that Solitario is involved.  
22 Government's Exhibit 11A-1, page ten.

23 And of course, Slow, 19A-1, page six.

24 And then Talibán, you saw those calls, too,  
25 right? The July -- or the June 27th call and the

1 June 29th call. Duende says that Talibán is involved.  
2 Talibán admits his own involvement when he says that  
3 they seen his photo, the shooting.

4 The calls aren't just bragging. They aren't  
5 just exaggerating. And the witnesses who testified,  
6 they weren't bragging or exaggerating, either. The  
7 calls tell the truth and those witnesses told the truth,  
8 And it all corroborates itself. It all comes back to  
9 the same list of participants for each of these four  
10 events.

11 Now, there's a lot said about Duende. Let's  
12 talk about Duende for a minute and think about that.  
13 Yeah, Duende, multiple murderer, bad dude; absolutely, I  
14 completely agree with that.

15 But man, talk about corroboration. He --  
16 his testimony was corroborated again and again and  
17 again, because, yeah, he was involved in everything --  
18 which makes him really bad, but he was involved in  
19 everything, which means he had testimony about  
20 everything, testimony that was corroborated.

21 He talks about the attempted murder. That's  
22 corroborated by Demente and by Drowsy. He talks about  
23 the murder of Lagrima. That's corroborated by Slow and  
24 Skinny. He talks about the -- the reburial of Lagrima,  
25 corroborated by Slow and Skinny. He talks about the

1 murder of Lil Guasón, corroborated by Slow, and the  
2 murder of Julio Urrutia, corroborated by Gatuso and  
3 corroborated, again, in all of these calls.

4           Yeah, he's a bad dude. But, you know, one  
5 of the things that defense counsel -- and they're really  
6 stretching when they're trying to talk about how bad he  
7 is, because they want to tell you he is so bad he tried  
8 to shoot his own mom.

9           He was nine years old. He was nine years  
10 old; kicked out of the house because his mom liked his  
11 other brother better, and at nine, yeah, at nine, he  
12 fired a gun at his mom.

13           I'm not going to defend him. I'm not going  
14 to say he's not a bad dude. But really? Really?  
15 That's the best thing they can come after Duende on?

16           At least Duende accepted responsibility. At  
17 least he told you about what it is that he did.

18           You've heard weeks of evidence in this case.  
19 You've heard witnesses. You've seen pictures of the  
20 bodies. You've heard experts and you've seen these  
21 calls. And I submit to you that this evidence, this  
22 wealth of evidence, proves to you that we proved to you,  
23 that I proved to you, beyond a reasonable doubt that  
24 each and every one of these defendants sitting behind me  
25 is guilty.

1                   And now it's your turn. It's your turn to  
2 go discuss and to go deliberate and to decide. I'm  
3 asking you to do justice. Do justice for the victims.  
4 Do justice for all of us, for our community, and render  
5 the only just verdict in light of all of the evidence, a  
6 verdict of guilty on every single count.

7                   Thank you, Your Honor.

8                   THE COURT: Thank you.

9                   FURTHER JURY INSTRUCTIONS BY THE COURT

10                  THE COURT: Ladies and gentlemen, you've  
11 heard all the evidence you're going to hear in  
12 connection with this case, and now I want to acknowledge  
13 the Sixth Amendment to the United States Constitution,  
14 which I think I told you about at the beginning of the  
15 trial, which says that in all criminal prosecutions, the  
16 accused shall enjoy the right to a speedy and public  
17 trial by an impartial jury, the right to be informed of  
18 the nature and cause of the accusation, to be confronted  
19 with the witnesses against him, and to have compulsory  
20 process of obtaining witnesses in his favor, and have  
21 the assistance of counsel in his defense.

22                  This trial has embodied that. And only in  
23 America can any voter be summoned to court to sit in  
24 judgment on their fellow human beings and to apply the  
25 law as given to you by the Court. Only in America can

1 you, from any walk of life, be summoned for jury duty.

2 Jury duty brings home to you the vital role  
3 that you play in the administration of justice, fairness  
4 in following the law.

5 In this case, I selected jurors who were  
6 fully engaged, who have been fully alert and have paid  
7 attention to all the evidence and have taken copious  
8 notes. And I have also selected jurors whose  
9 responsibility it was to be fully engaged and to  
10 participate in the trial in case we suffered the  
11 unfortunate incident of a juror becoming incapacitated  
12 or a juror, because of whose family member had some  
13 tragedy or emergency, was called away from jury duty.  
14 And those jurors are called alternate jurors.

15 Alternate jurors play a very vital role, and  
16 they stand ready to step in to ensure that we have a  
17 fair trial. And even now, alternate jurors stand in at  
18 the ready should any of our jurors become incapacitated  
19 during deliberations.

20 So, first, I want to knowledge my alternate  
21 jurors and say to each of you that you have, still, a  
22 vital role to play as this trial continues. The  
23 instructions I have given you throughout the trial and  
24 that I will reiterate now remain with you, and that is  
25 that you not discuss the case nor permit the case to be

1 discussed in your presence, that you don't do any  
2 posting on social media, that you don't do any reading  
3 or any media reports that might be made of this case,  
4 that you not visit any of the areas locations mentioned  
5 in the trial, and that you leave your notes in the jury  
6 deliberation room, where they will be separated from the  
7 jury room from the other jurors.

8 The reason for this is because if, during  
9 our deliberations, it becomes necessary to insert you  
10 into the deliberations, you must remain at the ready.

11 Your role remains vital. And you will hear  
12 from us in two ways: one, to ask you to come back to  
13 court, if necessary; and two, to report to you the final  
14 judgment reached in this case.

15 So, I would like to acknowledge my alternate  
16 jurors.

17 You can help check and double-check.

18 Is that right? Okay, thank you.

19 Ms. Ann Ward. Here is the juror  
20 appreciation certificate. Remember, your service is not  
21 done. Thank you very much. Go out with Mr. Toliver --  
22 wait. You can go together.

23 Mr. Daniel Freeze. Mr. Freeze, I appreciate  
24 your service. It's not done yet. Maintain my  
25 instructions. Here is your certificate.



1                   Mr. Thomas Clines. Thank you for your  
2 service; not done yet. Thank you.

3                   Ms. Terri Ann Foster. Ms. Foster, again, we  
4 appreciate your service. Thank you.

5                   Ms. Lisa Gameos. Your work is not done.  
6 Thank you so much.

7                   Mr. William Robert Mason. Thank you for  
8 your service. It's not over yet.

9                   (Discussion off the record with alternates.)

10                  THE COURT: You may be seated.

11                  MS. AUSTIN: Your Honor?

12                  THE COURT: Yes.

13                  MS. AUSTIN: May we approach while we're  
14 waiting for --

15                  THE COURT: Yes.

16                  MS. AUSTIN: Thank you.

17                  (Thereupon, the following side-bar  
18 conference was had:)

19                  MS. AUSTIN: Your Honor, I would like to  
20 renew our objection to counsel for the government's  
21 argument during her closing; again, what she stated  
22 about, the defendant should have presented evidence if  
23 they had evidence.

24                  And then later on in her argument --

25                  MR. ZIMMERMAN: Right at the head.

1 MS. AUSTIN: -- she said Jose Del Cid, at  
2 least he took responsibility and came in here and told  
3 you what he did.

4 So, it's one more statement by the  
5 government about a defendant who didn't present any  
6 evidence or didn't take the stand in his own behalf, and  
7 it is improper. It's burden shifting.

8 And I don't care what it's prefaced with,  
9 the statements were made, and they are improper, and  
10 it's grounds for a mistrial.

11 I'm sure the Court is not inclined to grant  
12 it at this point. But I would ask the Court to  
13 reinstruct the jury that no matter what counsel for the  
14 government might have said in her closing, a defendant  
15 is not required to present any evidence. And the fact  
16 that they didn't cannot be used against him. And he's  
17 not required to take the stand or testify on his own  
18 behalf, and that factor cannot be held against him.

19 I know the Court has instructed that  
20 already, but because of that out-of-line arguments by  
21 government's counsel, it needs to be reiterated. And  
22 that's my request.

23 MR. SALVATO: I think we all join in that,  
24 Your Honor. I think it was over the line for  
25 Ms. Martinez to say, at least they accepted

1 responsibility.

2 THE COURT: She was addressing the  
3 cooperators --

4 MR. SALVATO: I understand.

5 THE COURT: -- not the defendant's on trial.  
6 She was addressing the cooperators and the testimony.

7 MS. AUSTIN: Her words were, "At least he  
8 came in here and took responsibility."

9 THE COURT: That's after the defense, all  
10 the attacks, a mother killer and a murderer, which is  
11 what he was. But, that's fine. I mean, I appreciate  
12 you're making your record.

13 Anything more anyone else want to say? I'm  
14 listening.

15 MR. ZIMMERMAN: I think what's improper is  
16 the suggestion that -- that -- that since Duende pled  
17 guilty, that the defendants here should have pled  
18 guilty. At least he pled guilty, and they should have  
19 pled guilty. And I think that is beyond the burden of  
20 evidence. That's an improper suggestion -- that's an  
21 additional improper suggestion that was made.

22 MS. AMATO: And, Your Honor, as to  
23 Mr. Chavez, in our closing argument, we had also brought  
24 out many things, as well as many witnesses, that the  
25 government could have brought or could have presented

1 testimony.

2 And my concern is, although should they not  
3 specifically -- Ms. Martinez did not specifically  
4 address Mr. Chavez, he, too, could have brought in these  
5 witnesses.

6 The point is, it's out there now in front of  
7 the jury, based on what she did say regarding Mr. Chick  
8 and what he could have done, that the jury may, as they  
9 deliberate, think, "Well, you know, that's right. Why  
10 didn't Mr. Aquino and Ms. Amato present such and such  
11 witness, or why didn't they present such and such  
12 testimony or evidence?"

13 And so, there is this concern, it's out  
14 there. And so we would ask the Court to reinstruct.

15 THE COURT: All right.

16 Has everyone had a chance?

17 MS. MARTELL: On behalf of Mr. Castillo, we  
18 join the arguments of counsel.

19 THE COURT: All right. I'm prepared to say  
20 that you all join unless you opt out. No one opts out?  
21 Okay.

22 MS. MARTINEZ: Your Honor, to repeat the  
23 arguments that we made in the middle of my rebuttal --  
24 although I stand by those as well -- but just to address  
25 the additional objection that counsel has lodged about

1 the statement at the end, specifically about Duende, I  
2 think that in context, it's very clear that was  
3 responsive to the attacks on his credibility and the  
4 attacks on his very violent actions, which he certainly  
5 took.

6 And "at least he took responsibility" was,  
7 at least he took responsibility for those actions, and  
8 he told the truth about his actions. It was not a  
9 comparison to the other defendants. I think in context,  
10 that's extraordinarily clear.

11 Your Honor has instructed the jury  
12 repeatedly about what the Constitution holds, and that  
13 it does not require any defendant to testify. And, in  
14 fact, I said the same thing in my rebuttal.

15 I think that in context it was very clear  
16 that I was not intending to, and I was not intending to,  
17 draw a comparison to the defendants. It was a response  
18 to very specific arguments made by defense counsel about  
19 the cooperators in general, and about one cooperator in  
20 particular.

21 THE COURT: The record should reflect that a  
22 motion for mistrial has been made based upon the  
23 arguments made by government counsel.

24 This has been a very long trial. Thousands  
25 and thousands of words were recorded by my court

1 reporter. And I believe that I have at least 14 lawyers  
2 in front of me who objected to a brief statement made by  
3 the prosecutor.

4 That is giving entirely too much power to  
5 the government, that I'm sure that this jury is not any  
6 more focused on Ms. Martinez's comments, trying to  
7 respond to attacks made by every single defense counsel  
8 on the cooperators -- as you should, as you were  
9 expected to do -- and somehow elevate that to some level  
10 of jury instruction.

11 I assure you, government counsel does not  
12 have such power. I assure you, you do not have such  
13 power. The instructions, and I have given each juror  
14 their own copy -- let me see how many pages this is.

15 MR. TOBLER: 100, Your Honor.

16 THE COURT: Only me. 109 pages of  
17 instructions.

18 I do not think that what has occurred, in my  
19 view -- the context of the statement had to do with the  
20 attacks on Jose Del Cid, who is a multiple murderer, who  
21 fired a gun at his mother, and who has done other, many  
22 very vicious acts to other individuals and as a gang  
23 member, who testified at this trial -- and so did all  
24 the others, as far as I'm concerned, in terms of being  
25 cooperators or gang members.

1           The defense has legitimately, as they  
2 should, attacked the credibility and motivation of these  
3 witnesses. And the government certainly had an  
4 opportunity to respond.

5           So the motion for mistrial will be denied.

6           I'm going to send the jury out. You all  
7 stay in place. I'm going to send the jury out. Thank  
8 you.

9           (Thereupon, the side-bar conference was  
10 concluded.)

11           THE COURT: Ladies and gentlemen, you've  
12 heard all the evidence you're going to hear in  
13 connection with this case. Now you've heard the  
14 instructions of the Court and the arguments of counsel.  
15 It is now your duty to deliberate and arrive at a  
16 unanimous verdict.

17           My suggestion about your first order of  
18 business ought to be the election of your foreperson.  
19 The foreperson will preside over your deliberations and  
20 ensure that each juror has an opportunity to speak, and  
21 each juror's views are fully considered.

22           If, during the course of your deliberations,  
23 someone has to step out the use to facilities, then stop  
24 your deliberations until everybody is in the room. Do  
25 not deliberate at lunch or any place outside the jury

1 deliberation room.

2 Give us a little bit of time, and we will  
3 give you back the written instructions, and soon you  
4 will have all the exhibits that have been admitted into  
5 evidence for your consideration.

6 There are certain exhibits you won't get,  
7 like drugs and things like that. We don't send those  
8 back. If you want to see them, you will have to ask for  
9 them.

10 So what we ask you to do now is retire and  
11 return a unanimous verdict. Thank you.

12 (Jury excused to deliberate.)

13 THE COURT: Be seated.

14 All right, Counsel, two instructions.

15 The first is to each of you, review the  
16 exhibits that have been admitted into evidence to make  
17 sure that what's placed in the cart to go back to the  
18 jury room is what was admitted.

19 It's very important that you do so  
20 meticulously. You may not know this story, but I've had  
21 a capital case here where ultimately, during  
22 deliberations, a document which I excluded from evidence  
23 went back, and it created great havoc in the court.

24 I don't want to have that happen here. And  
25 so, I expect you as officers of the Court to do that



1 review and sign my certification that you've done that.

2 Let me also say that this is a very complex  
3 case, probably an epic and historic case for this Court,  
4 and so I realize that a lot of time and effort was  
5 devoted to it by each of you to prepare this case as  
6 officers of the court.

7 I have presided over many trials, and this  
8 one was one that will stand out for me, and hopefully it  
9 will stand out for you, where we tried to deliver  
10 fairness to everyone.

11 We're in recess now. Thank you.

12 (Court recessed at 3:25 p.m. and reconvened  
13 at 5:05 p.m.)

14 THE COURT: Are you ready to bring the jury  
15 out?

16 (Counsel indicating.)

17 THE COURT: You can bring the jury out,  
18 Mr. Toliver. Thank you.

19 (Jury present.)

20 THE COURT: You may be seated.

21 All right, ladies and gentlemen, I've  
22 received your schedule, and your schedule for  
23 deliberation is fine.

24 I just want to remind you, as I do each day  
25 at the end of the day, that you do not discuss the case

1 with anyone nor permit the case to be discussed in your  
2 presence.

3 Don't do any research on the case on the  
4 Internet or anything like that, dictionaries, nothing  
5 like that. Don't do any posting on social media.

6 There may be some media reports, so please  
7 do not watch any media reports or don't read anything in  
8 the paper about it or on the Internet. And don't visit  
9 any of the locations mentioned during the trial.

10 Leave your notes in the jury deliberation  
11 room.

12 I understand you all will resume tomorrow at  
13 10:00 o'clock. And Mr. Toliver will tell you which jury  
14 room to report to directly.

15 You will begin your deliberations as soon as  
16 all the jurors are in the room. We're not going to come  
17 back to court until the end of the day. Okay?

18 Thank you.

19 (Jury out.)

20 THE COURT: We're in recess.

21 (Proceedings concluded at 5:08 p.m.)

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CERTIFICATE OF REPORTER

I, Renecia Wilson, an official court reporter for the United States District Court of Virginia, Alexandria Division, do hereby certify that I reported by machine shorthand, in my official capacity, the proceedings had upon the jury trial in the case of UNITED STATES OF AMERICA v. JOSE LOPEZ TORRES, et al.

I further certify that I was authorized and did report by stenotype the proceedings in said jury trial, and that the foregoing pages, numbered 1 to 179, inclusive, constitute the official transcript of said proceedings as taken from my shorthand notes.

IN WITNESS WHEREOF, I have hereto subscribed my name this 29th day of November, 2016.

/s/

---

Renecia Wilson, RMR, CRR  
Official Court Reporter